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THE LAW OF CONTRACTS IN MICHIGAN

EXHAUSTIVELY TREATING
INTERNAL STRUCTURE
WITH
FORMS

BY
FRANKLIN A. BEECHER

AUTHOR OF THE
ANNOTATIONS TO THE MICHIGAN
CONSTITUTION OF 1908

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DRAKE LAW BOOK COMPANY
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PREFACE

This volume on Contracts is the first to appear in the "Michigan Written Instrument Series." Because of the subject of the series in which it is placed, it has been deemed advisable to treat exhaustively in Part One so much of the law as relates to the formation of contracts giving particular emphasis to written contracts in their various aspects and, therefore, it includes a complete treatment of the internal structure, to which is added a suggestive treatment of the Statute of Frauds.

In the Introduction the principles of the law pertinent to the external structure of contracts, or that which relates to the validity of contracts as well as construction and discharge, is discussed with conciseness, for the purpose of refreshing the reader's memory on the general principles and to aid him in the preparation of contractual documents. Thus the entire subject of contracts will be found in the book.

In the preparation of the text every effort has been made, often at the sacrifice of style, to state wherever possible, the principles of the law in the *exact language of the court*. Every pertinent point in a case has been placed under as many headings and sub-headings as it was susceptible of classification, so as to offer suggestions to the practitioner for new applications.

Part Two contains an exceptionally large compilation of forms, a careful study of which will enable a lawyer to formulate any kind of a contract his exigencies demand. These forms are arranged in groups and in most instances each group is preceded by a model form. The others are largely taken from the Supreme Court Reports to which references are made and where their construction will be found. The selections are modern and it is hoped will be found sufficient for all the usual and ordinary transactions of business.

FRANKLIN A. BEECHER.

July 1st, 1910.

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

INTRODUCTION

CONTRACTUAL RELATION, OBLIGATION AND LIABILITY.

	PAGE
I. Prefatory.	
A. The Right of Contract	xx
B. The Freedom of Contract	xxi
C. Distinction between Contract and Tort	xxii
II. Contractual Relation and Obligation.	
D. Validity. Elements	xxii
Contractual Relation founded on Fiction.....	xxiii
Quantum Meruit and Quantum Valebant	xxiv
Distinction between Conversion and Conversion by Sale.....	xxv
Money Paid under Mistake	xxv
Exception to the Rule	xxvi
Money Paid under Compulsion	xxvii
Duress	xxviii
Statute of Frauds	xxviii
Statutory Right	xxviii
In General	xxix
Formal Documents	xxix
• Contractual Relation. Definition	xxix
E. Transition from Validity to Invalidity. Intention.....	xxix
F. Invalidity, Void, Voidable, Rescission, Illegal, Unenforcible.....	xxix
Void and Voidable	xxx
Fraud	xxx
Mistake	xxx
Duress	xxxi
Competency Infants	xxxii
Married Women	xxxii
Insane Persons	xxxii
Drunkards	xxxiii
Rescission	xxxiii
Condition to Rescission	xxxiv
Laches	xxxiv
Time	xxxiv
Operation	xxxiv
Illegal	xxxiv
Classification of Illegal Contracts	xxxv
Distinction between Illegal and Void Contracts.....	xxxvii
General Rules as to Illegal Contracts.....	xxxviii
Contracts connected with Illegal Ones.....	xxxviii
In pari delicto portier est conditio defendentis.....	xxxix
Unenforcible	xxxix
G. Valid Contract. Definition	xxxix
Intention	xl
H. Ex Nudo Pacto non Oritur Actio.....	xl

TABLE OF CONTENTS

III.	Contractual Liability.	PAGE
I.	Enforcement. Valid or Legal Contract.....	XL
J.	Enforcement. Invalid or Illegal Contract.....	XLI
K.	Unumquodque dissolvitur eodem ligamine quo et ligatur.....	XLiii
	Performance	XLiii
	Tender	XLiii
	Waiver	XLiii
	New Contract	XLiv
	Renunciation	XLiv
	Merger	XLiv

PART ONE—Internal Structure

CHAPTER I. NATURE AND SCOPE OF CONTRACTS.

§1.	Definition	3
§2.	What Constitutes Contract	3
§3.	Contractual Relations	4
§4.	Privity	4
§5.	Classification of Contracts.....	4
§6.	The Difference Between Express and Implied Contracts.....	6
§7.	Distinction Between Implied and Quasi-Contracts.....	6
§8.	The Essential Elements	6
	(1) Parties	6
	(2) Consideration	7
	(3) The Thing Contracted for or Subject-Matter.....	7
	(4) Assent	7
§9.	All the Elements May be Present, Yet No Contract Exists.....	7

CHAPTER II. FORMAL CONTRACTS.

§10.	Development of the Law.....	9
§11.	The Nature of Formal Contracts.....	10
§12.	Classification of Formal Contracts.....	10
	(a) Signing	12
	(b) Sealing	13
	(c) Delivery	14
	Delivery in Escrow	16
	Deposited for Delivery on Death.....	17
	Presumptions	17
	Acceptance	18
	Affixing Stamps	18

CHAPTER III. SIMPLE AND SIMPLE WRITTEN CONTRACTS.

§13.	Definition	20
§14.	Acceptance of Benefits from Work, Labor or Goods.....	20

TABLE OF CONTENTS.

	PAGE
§15. Acceptance of Tickets, Bills of Lading, Receipts, etc.....	21
§16. Auction Sales	22
§17. Business Circulars and Proposals.....	23
§18. Time Tables	24
§19. Simple Written Contracts.....	24
(1) Written Contracts that need not be in writing.....	25
(a) Contracts that need not be in writing, nor proved by writing, but, nevertheless, are in writing....	26
(b) Contracts that need not be in writing, but must be proved by writing.....	26
(2) Written contracts that must be in writing.....	27
By Act of Congress.	
(a) Assignments of Copyrights.....	27
(b) Assignments of Patents for Inventions.....	27
By Statute.	
(A.) Acceptance of a Bill of Exchange or other Orders for the Payment of Money.....	27
(B) Acknowledgment of a Debt Barred by the Statute of Limitations	28
(C) All Conveyances or Contracts to Real Estate....	28
(D) All Bills of Exchange and Promissory Notes....	28
(E) Under the Statute of Frauds Certain Specified Contracts must be in writing.....	28
(3) The Memorandum	35
(a) When must a Memorandum be made.....	35
(b) What must be the Form of the Memorandum....	36
(c) What Constitutes a Memorandum.....	36
(d) What must be the contents of the memorandum..	37
(e) What must be the Form of Signature.....	37
(f) What Constitutes Delivery	38
§20. The Substantive Rule of Parol Evidence.....	39
(a) Evidence of the Contract's Existence.....	42
(b) Evidence of the Contract Itself.....	42
(c) Evidence of its Terms.....	42
(1) Exceptions	42
(a) Those matters which are presumed.....	43
(b) Those matters which the parties had in mind and agreed upon, but did not give expression to in the written contract.....	44
(c) Those matters which by force of law are a part of the contract.....	45
(2) Limitations	45
(a) Matters of Identification.....	46
(b) Matters Explanatory	46
§21. Construction of Written Contracts.....	46
(a) Written Contracts in General.....	47
(b) Language employed in the Contract.....	47
(c) Written and printed parts of a Contract.....	48
(d) Clauses which are in conflict.....	48
(e) Written Instruments must be construed together.....	48
(f) Time as of the Essence of Contract.....	49
(g) Reasonable Time implied.....	49
(h) Penalties and Liquidated Damages.....	50
§22. Conditions in Written Contracts.....	51

TABLE OF CONTENTS.

CHAPTER IV. PARTICULAR WRITTEN CONTRACTS.

	PAGE
§23. Particular Contracts	53
§24. Adoption of Children Contracts.....	54
§25. Advertising Contracts	54
§26. Agricultural Contracts	55
§27. Antenuptial Contracts	55
§28. Apprentice Contracts	56
§29. Arbitration and Award Contracts.....	57
§30. Attorney and Client Contracts.....	58
§31. Bailment Contracts	59
§32. Board, Lodging and Support Contracts.....	61
§33. Board of Trade Contracts.....	62
§34. Boundary Contracts	62
§35. Building Contracts	62
§36. Conditional Sale Contracts	65
§37. Compromise and Settlement Contracts.....	66
§38. Composition and Creditors' Contracts.....	67
§39. Corporation Contracts	68
§40. Employment Contracts	68
§41. Exchange of Property Contracts.....	69
§42. Guaranty Contracts	70
§43. Joint Adventure Contracts.....	71
§44. Insurance Contracts	71
§45. Land Contracts	72
§46. Loans and Advance Contracts.....	73
§47. Manufacturing Contracts	74
§48. Municipal Corporation Contracts.....	74
§49. Option Contracts	75
§50. Partnership Contracts	75
§51. Party Wall Contracts.....	76
§52. Principal and Agent Contracts.....	76
§53. Principal and Surety Contracts.....	77
§54. Riparian Contracts	77
§55. Sale Contracts	77
§56. Subscription Contracts	79
§57. Telegraph and Telephone Contracts.....	79
§58. Trade and Business Contracts.....	79
§59. Trust Contracts	79

CHAPTER V. OFFER AND ACCEPTANCE.

§60. Parties, Mutuality, Assent, Offer and Acceptance.....	82
§61. Invitation to Negotiate Distinguished from Offer.....	84
§62. Offer Capable of Creating Legal Relations.....	85
§63. The Offer Must be Definite. Statute of Frauds.....	86
§64. Communication of Offer in Some Cases.....	86
§65. Continuing Offer	87
§66. Revocation and Withdrawal	87
§67. Express Revocation	87
§68. Implied Revocation	87
§69. Irrevocable Offer	88
§70. Rejection of Offer.....	88
§71. Lapse of Offer.....	88

TABLE OF CONTENTS.

	PAGE
§72. Form of Offer.....	88
§73. Intention to Accept.....	89
§74. Manner of Communicating Acceptance.....	89
§75. Acceptance Must Correspond to Offer.....	89
§76. Acceptance Varying or Modifying Offer.....	90
§77. Validity of Acceptance When Parties Differ as to Terms in At- tempting to Reduce Contract to Writing.....	91
§78. Emphasis Placed on Certain Terms in Acceptance.....	91
§79. Acceptance by Mail or Telegraph.....	91
§80. Acceptance Concerning Absolute Guaranty.....	92
§81. Acceptance of Order Given to Agent.....	92
§82. The Acceptance of a Rejection of an Offer by One Joint Vendor.....	93
§83. Necessity of Distinguishing Between Offer and Acceptance.....	93
§84. Offer and Acceptance as to Evidence.....	93
§85. Offer and Acceptance as to Implied Agreements.....	94
§86. Offer, Acceptance and Subject-Matter.....	94
§87. Offer and Acceptance in Relation to Consideration.....	95

CHAPTER VI. CONSIDERATION.

§88. Definition	96
§89. Distinction Between Consideration and Motive.....	97
§90. Classification of Considerations.....	97
§91. Consideration in Relation to Offer and Acceptance.....	98
§92. Necessity and Sufficiency of Consideration.....	98
§93. From, to Whom the Consideration Must Move.....	100
§94. The Relation of Consideration to Formal Contracts.....	100
§95. Consideration in Relation to Bills of Exchange and Promissory Notes	102
§96. Valuable Consideration	102
§97. Executed, Executory and Past Considerations.....	103
§98. Illegal Consideration	104
§99. Mutual Promises	105
§100. Adequacy of Consideration	105
§101. Consideration in Equity	106
§102. Contingent Consideration	106
§103. Conditional Promises	107
§104. Performance of Legal Obligation.....	107
§105. Performance of Broken Contracts	109
§106. Forbearance	109
§107. Consideration for Benefit of Third Persons.....	110
§108. Consideration in Relation to Bailment.....	110
§109. Future Considerations	111
§110. Future Advances	111
§111. Compromise of Doubtful and Unliquidated Claims.....	112
§112. Composition with Creditors.....	112
§113. Subscription Paper	113
§114. Pre-existing Obligations	113
§115. Past Considerations	113
§116. Moral Obligation	114
§117. Modification of Contract	114
§118. Unenforcible Consideration	115
§119. Failure of Consideration.....	115
§120. The Effect of Failure or Want of Consideration.....	115
§121. Consideration in Relation to Mutuality.....	115
§122. Consideration in Relation to Subject-Matter.....	116
§123. Assent in Relation to Consideration.....	117
§124. Types of Consideration.....	118

TABLE OF CONTENTS.

CHAPTER VII.

STATUTE OF FRAUDS.

	PAGE
§125. Statute in General	125
(a) Memorandum	131
(b) Contents	132
(c) Manner of Execution	133
(d) Time of execution.....	133
(e) Variations	133
(A) Agreements in Consideration of Marriage.....	133
(B) Promises by an Executor or Administrator.....	134
(C) Promises to Answer for the Debt, Default or Miscarriage of another	134
(a) Novation	138
(D) Representations	138
(E) Agreements not to be Performed Within One Year.....	139
(F) Contracts for Land.....	140
(G) Contracts for the Sale of Goods.....	142
(H) Operation of Statute.....	145
(a) Operation as to Rights and Remedies.....	145
(b) Operation as to Interest Created Without Writing in Estates from Year to Year, Month to Month, or at Will	146
(c) Validity of Oral Contracts and Conveyances Without Deed or Note in Writing.....	146
(d) Enforcement of Oral Contracts in Equity.....	146
(e) Promise Reduced to Writing.....	147
(f) Collateral Contracts	147
(g) Contracts Part Within Statute.....	147
(h) Contracts Performed in Part Within Statute....	147
(i) To Whom Statute Available.....	148
(j) Contract as Ground for Equitable Relief.....	148
(k) Tender as to Performance.....	148
(l) Recovery for Use and Occupation.....	148
m) Recovery of Services.....	148
(n) Services Rendered to Third Persons.....	149
(o) Contracts to Convey or Devise Lands in Consid- eration of the Performance of Services.....	149
(p) Contracts Implied by Law on Part Performance.	149
(q) Contracts Completely Performed.....	149
(r) Contracts Performed in Part.....	150
(s) Parol Modification of Written Instrument.....	150
(t) Oral Contracts as Grounds of Defense.....	150
(u) Contract as Measure for Damages.....	151
(I) Construction of Statutes.....	151
(J) Conflict of Laws	151
(K) Pleading	151
(L) Evidence	152
(M) Practice	153

INTRODUCTION

Suggestions on How to Draw Contracts, p. 157

PART TWO—Forms

	PAGE
§126. Agreements or Contracts. Skeleton.....	159
§127. Agreements or Contracts. Skeleton.....	159
§128. Agreements or Contracts. Skeleton.....	159
§129. Agreements or Contracts. General Form.....	160
§130. Agreements or Contracts. General Form.....	161
§131. Adoption Contract	161
§132. Adoption Contract	162
§133. Advertising Contract	162
§134. Advertising Contract	163
§135. Agreement for a Lease.....	164
§136. Agricultural Contract	165
§137. Apprenticeship Contract	166
§138. Arbitration Contract	167
§139. Arbitration Contract	168
§140. Arbitration Contract	169
§141. Assigned Claim Contract.....	169
§142. Attorney and Client Contract.....	170
§143. Auction Contract	171
§144. Author's Contract	171
§145. Beet Sugar Contract. Planting.....	172
§146. Beet Sugar Contract.....	174
§147. Board, Lodging and Support Contract.....	176
§148. Board, Lodging and Support Contract. Between Housekeeper and Lodger	178
§149. Board, Lodging and Support Contract. Support of Insane Per- sons	179
§150. Board, Lodging and Support Contract.....	180
§151. Board of Trade Contract. Wheat.....	182
§152. Board of Trade Contract. A Put.....	182
§153. Board of Trade Contract. A Call.....	183
§154. Board of Trade Contract. A Spread.....	183
§155. Building and Construction Contract. On Proposal.....	183
§156. Building and Construction Contract. Building.....	199
§157. Building and Construction Contract. Between Owner and Builder	201
§158. Building and Construction Contract. Building.....	207
§158a. Building and Construction Contract. Building.....	215
§159. Building and Construction Contract. Theater Building.....	221
§160. Building and Construction Contract. Railroad.....	224
§161. Building and Construction Contract. Railroad.....	226
§162. Building and Construction Contract. Railroad.....	229
§163. Building and Construction Contract. Railroad.....	233
§164. Building and Construction Contract. Railroad.....	236
§165. Building and Construction Contract. Clauses.....	237
§166. Building and Construction Contract. Clauses.....	239

TABLE OF CONTENTS.

	PAGE
§167. Building and Construction Contract. Clauses.....	240
§168. Carriers' Contract. Ticket.....	241
§169. Carriers' Contract. Express Receipt.....	242
§170. Carriers' Contract. Conditions.....	244
§171. Carriers' Contract. Live Stock.....	248
§172. Charter Contract	250
§173. Composition with Creditors Contract.....	251
§174. Compromise and Settlement Contract. To Conduct Business.....	253
§175. Compromise and Settlement Contract. To Pay Attorney Fees.....	257
§176. Condition in Contracts. Condition Precedent.....	257
§177. Condition in Contracts. Condition Subsequent.....	259
§178. Condition in Contracts. Showing Implied Condition.....	260
§179. Conditional Sale Contract	262
§180. Conditional Sale Contract	264
§181. Conditional Sale Contract	264
§182. Conditional Sale Contract	266
§183. Conditional Sale Contract	267
§184. Conditional Sale Contract	269
§185. Conditional Sale Contract	270
§186. Conditional Sale Contract	272
§187. Conditional Sale Contract	274
§188. Construction Contract. To Construe Previous Contract.....	275
§189. Copyright Contract	275
§190. Corporation Contract. General Form	276
§191. Corporation Contract. Subscription Before Organization.....	278
§192. Corporation Contract. Re-organization	278
§193. Corporation Contract. Guaranty	285
§194. Corporation Contract. Option in Stock	286
§195. Electric Service Contract. Electric Light.....	286
§196. Employment Contract. Offer	289
§197. Employment Contract	289
§198. Employment Contract	290
§199. Employment Contract	291
§200. Exchange Property Contract. Real Estate.....	292
§201. Gas Company Contract. Application	293
§202. Guaranty Contract. To Extend Credit	295
§203. Guaranty Contract. Fidelity of Employee.....	296
§204. Guaranty Contract. Fidelity Clause	297
§205. Guaranty Contract. Endorsement	298
§206. Insurance Contract. Policy	299
§207. Land Contracts	306
§208. Lease and Option Contract. Land	306
§209. Manufacturing Contract—General Form	309
§210. Manufacturing Contract. Engines, Boats, Machines	309
§211. Manufacturing Contract. Patent Articles	311
§212. Manufacturing Contract. Lumber	313
§213. Manufacturing Contract. Lumber	314
§214. Manufacturing Contract. Lease of Machinery	318
§215. Marriage Contract	320
§216. Marriage Contract. Settlement of an Estate	321
§217. Marriage Contract. Settlement	324
§218. Marriage Contract. Separation	325
§219. Marriage Contract. Trust Provisions	326
§220. Marriage Contract. Antenuptial	328
§221. Marriage Contract. Antenuptial	329
§222. Marriage Contract. Antenuptial	331
§223. Municipal Contract	333

TABLE OF CONTENTS.

	PAGE
§224. Municipal Contract. Light	333
§225. Option Contract. Offer and Acceptance.....	336
§226. Option Contract	342
§227. Option Contract	343
§228. Order in Nature of Contract.....	344
§229. Partnership Contract	345
§230. Partnership Contract	348
§231. Party Wall Contract	350
§232. Party Wall Contract	352
§233. Principal and Agent Contract. Conduct Business.....	353
§234. Principal and Agent Contract.....	356
§235. Principal and Surety Contract. Bond.....	358
§236. Publishers' Contract	360
§237. Ratification of Debt Contract. Infant or Otherwise.....	361
§237a. Railroad Compromise Contract. Receipt Form.....	362
§238. Real Estate Contract. Sale of Land.....	363
§239. Real Estate Contract. Farm on Installment.....	366
§240. Real Estate Contract. To Cultivate Land on Shares.....	367
§241. Real Estate Contract. Provisions Against Nuisances.....	368
§242. Real Estate Contract. Land.....	370
§243. Real Estate Contract.....	370
§244. Real Estate Contract. Sale of Land.....	372
§245. Real Estate Contract. Annuling of Conveyance.....	375
§246. Revival of Debt Contract Under Statute of Limitations.....	378
§247. Riparian Contract	379
§247a. Sale Contract. Note	383
§248. Sale Contract	383
§249. Sale Contract	386
§250. Sale Contract. Restraint of Trade Clause.....	387
§251. Sale Contract. Share of Stock in Company.....	388
§252. Sale Contract. Business.....	389
§253. Sale Contract	391
§254. Sale Contract. Fruit.....	391
§255. Sale Contract. Ice	392
§256. Sale Contract. Nurserv Stock.....	393
§257. Sale Contract. Propeller	395
§258. Sale Contract. Lumber	396
§259. Sale Contract—Partnership Interest.....	397
§260. Sale, Building and Loan Contract	398
§261. Submission Contract. Clause in Contract.....	403
§262. Subscription Contract	403
§263. Supplemental Contract	404
§264. Teacher's Contract	404
§265. Telegraph and Telephone Contract. Conditions.....	406
§265a. Telegraph and Telephone Contract. Telephone.....	408
§265b. Timber Land Contracts. Conditions.....	410
§266. Trade or Business Contract.....	412
§267. Trade or Business Contract. Conduct Business.....	412
§268. Trust Contract	415
§269. Trust and Combination Contract.....	418
§270. Underwriting Contract.....	422
§271. Union Labor Contract.....	426
§272. Union Labor Contract. Label.....	429
§273. Warehouse Receipt Contract.....	430

CONTRACTS IN MICHIGAN

Introduction

CONTRACTUAL RELATIONS, OBLIGATIONS AND LIABILITY.

I. PREFATORY.

A. The Right of Contract.

The right of contract from an economic standpoint is the bulwark of all individual enterprise and the highest right bestowed upon the individual. It has its basis in the faith confided in man, for its specific feature is not to create rights in property, but rights in the conduct of man, i. e., the right to his conduct. The faith that he will act or conduct himself just as he agreed and reciprocally on his behalf that the party with whom he entered into contractual relations will act or conduct himself as he agreed are the essential elements that enter into the relationship. The implication under these conditions is that the parties are taking a risk. In all legal relations the assumption of a risk is always taken, and in whatever legal relation a person enters by his act, conduct or deed, whether purposely or otherwise, he is bound to contemplate the ultimate consequences of his conduct, and this is equally true when making a contract or a promise, or when doing some act from which a promise may be inferred, or when performing some act or duty. Naturally then, in these instances, he must bear in mind the payment of damages, in the event of a breach, when contemplating his responsibility. It is in the formative period when parties are entering into contractual relations that these psychological elements manifest themselves, for "a contract," says Dr. Woolsey, "is one of the highest acts of human free will, it is the will bending itself in regard to the future, and surrounding the right to change a certain expressed intention, so that it becomes morally and jurally a wrong to act otherwise, it is the act of two parties in which each or one of the two conveys power over himself to the other, in consideration of something

INTRODUCTION.

done or to be done by the other¹." Thus, mutual rights, duties and responsibilities are formed. A well defined feeling of responsibility is indicative of a high sense of obligation, and no higher praise can be bestowed upon man than the popular saying: "This man's word is as good as his bond." If it were not for lapses of memory, inaccuracies of speech, subterfuges, evasions of responsibility, wilful deception and downright dishonesty, contracts would not necessarily need to be reduced to writing ordinarily, but in transactions of a complicated nature and in instances where the law requires the contract to be in writing, it is highly essential that the contracting parties have their agreements in writing so as to safeguard their interests.

B. The Freedom of Contract.

The freedom to the right of contract is fortified by the constitutional guarantee that no law impairing the obligation of contract shall be passed². This right is included both in the right of liberty and the right of property³. Although the right is so comprehensive, persons elected or appointed to public office are not subjects of contract between themselves and the public or people⁴. However, there are limitations placed upon the right to contract by the police power.

This power, although subservient to the constitutional guarantees, is inherent in the legislature to make, ordain, and establish all manner of reasonable regulations and laws whereby to preserve the peace and order of society and the safety of its members⁵, and to prescribe the mode and manner in which every one may so use and enjoy that which is his own as not to preclude others from a corresponding use and enjoyment of their own⁶. It is apparent then that all the rights and property within the jurisdiction of the state are within the exercise

1. Woolsey's Introduction to International Law.

2. Beecher's Annotated Constitution of Michigan, '08, Art. II, Sec. 8, p. 48.

3. Kuhn v. Common Council, 70

Mich. 534.

4. Attorney General v. Jochim, 99 Mich. 358.

5. People v. Jackson & Michigan Plk. Road Co., 9 Mich. 285.

6. People v. Jackson & Michigan Plk. Road Co., 9 Mich. 285

CONTRACTS IN MICHIGAN.

of its authority and the right to contract is subject to its regulation, control and restraint. In placing a limitation upon the freedom of contract or right to contract, courts have established the following principle: That where there is a disadvantage and inequality in the contractual relations between the parties so that the conditions may be imposed by one party without any power of choice on the part of the other party the legislature may invoke its police power to regulate these relations with a view of ameliorating them, and to prevent fraud, oppression and undue advantage⁷.

C. Distinction between Contract and Tort.

The distinction between a contractual relation and a tortious relation lies in that the duty to be observed in the first instance is fixed by the will of the parties, while the duty to be observed in the second instance is fixed by law. The common ground upon which they meet is that a state of facts may arise in tort, which also constitute a breach of contract, and in that event the injured party may exercise his right of election whether to bring an action *ex contractu* or *ex delicto*⁸.

II. CONTRACTUAL RELATION OR OBLIGATION.

D. Validity. Elements.

Contractual relations or obligations are brought about or entered into in three ways: by the express act of the parties, which may be by word of mouth or in writing, or by an act of the parties manifested in such conduct as implies a meeting of the minds with intent to contract; or by operation of law in which by a fiction contractual relation is assumed. In expounding the validity of the real contractual obligation from its elemental standpoint the Supreme Court in clear and concise language has said⁹: "A contract implies the assent of two minds. The parties must understand that one party has made an offer, and the other has accepted it. But if A. promise B. to pay him a

7. Peel Splint Coal Co. v. West Virginia (W. Va.), 17 L. R. A. 385.

8. Farwell v. Myers, 64 Mich. 234; Coe v. Wager, 42 Mich. 49.

9. People v. Taylor, 2 Mich. 250.

INTRODUCTION.

certain sum of money if he will call for it at a particular time, and B. calls accordingly, the promise is binding, the calling for the money is a sufficient consideration. It is not necessary that the consideration should exist at the time of making the promise, for if the person to whom the promise is made, should incur any loss, expense or liability, in consequence of the promise, and relying upon it, the promise thereupon becomes obligatory. Thus, if A. promise B. to pay him a sum of money if he will do a particular act, and B. does the act, the promise thereupon becomes binding, although B. at the time of the promise does not engage to do the act. In the intermediate time, the obligation of the contract or promise is suspended; for until the performance of the condition of the promise, there is no consideration, and the promise is *nudum pactum*; but on the performance of the condition by the promisee, it is clothed with a valid consideration, which relates back to the promise, and it then becomes obligatory as an express promise; so if a reward be offered for the apprehension of a culprit, or for the doing of any other lawful act, the promise, when made, is *nudum pactum*; but when any one relying upon the promised reward performs the condition, this is a good consideration for the previous promise, and it therefore becomes binding upon the promisor. It is an implied part of the offer, that time shall be afforded to any one who chooses to accept it; and if before the offer is withdrawn, a person does that which, from the terms of the offer, will entitle him to the reward, his waiting upon the offer constitutes an acceptance of it, and the party making the offer is bound to fulfill his promise. When the parties are free to act, to constitute a contract, the one must offer, and the other must accept, unless it is a part of the agreement that time shall be given to the person to whom the offer was made, to determine whether he will accept or not; in which case, the time given makes a part of the offer."

CONTRACTUAL RELATION FOUNDED ON A FICTION.

Contractual relations, not real in their nature, are transactions in which the parties make no agreement whatever, but on which the law grounds specific obligations arising from breach of duties,

CONTRACTS IN MICHIGAN.

imposed by statute and by law¹⁰. The duty involved under this class of obligations is suggestive of contractual relations, and therefore justifies the fiction in that the tortious act or transaction by which the party commits the tort seeks to enrich himself by taking or using the property of another, the latter may elect in some cases either to sue in tort to recover damages for the injury sustained, or to sue in *assumpsit* to recover the value of the property wrongfully taken or used, and in the event he elects the action in *assumpsit*, he waives the tort and sues on contract. Thus, where the plaintiff sued the defendant for the purpose of recovering from him for having entered and taken into his services and harbored his minor son, he cannot, after suing in *assumpsit*, bring an action in tort¹¹.

Quantum Meruit and Quantum Valebant.

It may be said that in some cases a special contract, not executed, may give rise to a claim in the nature of a *quantum meruit*, that is, where a special contract has been made for goods, and goods sent, not according to the contract, are retained by the party, then a claim for the value, on a *quantum valebant*, may be supported; but then, from the circumstances, a *new contractual relation or obligation is assumed by operation of law*¹². If a stranger takes B's goods and delivers them to another person, no doubt a contractual relation or obligation may be implied, and B may bring either an action of *assumpsit* or of *trover*, so where the action is commenced in tort, and by stipulation of parties changed to *assumpsit*, and where the possession of the property is obtained under contract between the parties, the refusal to surrender upon demand amounts to a conversion for which the tort can be waived and *assumpsit* brought¹³. The relation of

10. See §5.

11. *Thompson v. Howard*, 31 Mich. 311. In this case the court said: "A man may not take contradictory positions, and where he has a right to choose one of two modes of redress, and the two are so inconsistent that the assertion of one involves the negation or repudiation

of the other, his deliberate and settled choice of one, with knowledge, or the means of knowledge of such facts as would authorize a resort to each, will preclude him thereafter from going back and electing again."

12. *Allen v. McKibbie*, 5 Mich. 450.

13. *Aldine Mfg. Co. v. Barnard*, 84 Mich. 632.

INTRODUCTION.

the parties in cases of this class has its inception in contract, but simultaneously with the contract there is a duty superimposed or arising out of the circumstances surrounding or attending the transaction, the violation of which duty constitutes the tort¹⁴.

Distinction between Conversion and Conversion by Sale.

A distinction must be drawn here between two classes of cases. Thus, where property has been tortiously taken, and converted by sale, the owner may affirm the sale, and sue for the proceeds in *assumpsit*, but, where the property has been converted, the tort cannot be waived¹⁵. The general rule is that before a party can waive a tort for the conversion of personal property and bring *assumpsit*, the property in the hands of the tort-feasor must have been sold and converted into money, upon the theory that no one shall be allowed to enrich himself unjustly at the expense of another, or to prevent one profiting by his own wrong¹⁶. In regard to real estate the rule for the wrongful use and occupation of land where the rental value is sought to be recovered is that no action for use and occupation will lie except where a relation exists of landlord and tenant, by virtue of which an obligation exists to pay the rent¹⁷.

Money Paid under Mistake.

It is well established that money paid under a mistake of material facts, i. e., the payment must be induced by mistake, may be recovered back, although there was negligence on the part of the person making the payment; but this rule is subject to the qualification that the payment cannot be recalled when the situation of the party receiving the money has been changed in consequence of the payment or that the money has been received in good faith, and in the ordinary course of business for a valuable consideration¹⁸. Neither can money paid by way of compromise or settlement be recovered generally¹⁹. It is apparent

14. Tuttle v. Campbell, 74 Mich. 652.

15. Fiquet v. Allisin, 12 Mich. 328.

16. Tuttle v. Campbell, 74 Mich. 652.

17. Lockwood v. Thunder Bay River Boom Co., 42 Mich. 536.

18. Walker v. Conant, 65 Mich. 194, 69 Mich. 321.

19. McArthur v. Luce, 43 Mich. 435. In this case the court said:

now that money paid under a mutual mistake for that which has no legal existence or validity may be recovered back as paid without consideration²⁰ but where one performs labor by mistake, though in good faith, upon the property of another who appropriates the benefit of it, he is not entitled to recover, when the identity of the original article is not destroyed nor its value greatly increased²¹. The principle concerning real property is that purchase money paid for the purchase price of land can be recovered in an action for money had and received, whether the consideration fails for want of title or for want of a valid contract to convey, but in either case the purchaser must place the other party *in statu quo*, so far as is practicable for him to do so; and in either case the equities, so far as they can be measured by a pecuniary standard, can all be settled and adjusted in the suit²².

Exception to the Rule.

There is an exception to the rule that money paid under mistake may be recovered where it is against conscience to retain the money so paid. Thus, where a claim is allowed by a board of auditors after they have been informed that their liability is doubtful and have taken advice, they cannot recover back the sum paid on such allowance, as their mistake is one of law and not of fact²³.

"Where a claim is thus made against another who, not relying upon the representations of the claimant, has the opportunity to and does investigate the facts, and thereupon becomes satisfied that the claim made is correct and adjusts and pays the same, I think such settlement and payment should be considered as final. If not, it is very difficult to say when such disputed questions could be considered as finally settled, or litigation ended. In settlement of disputed questions where both parties have equal opportunity and facilities for ascertaining facts, it becomes incumbent on each to then make his investigation and not carelessly settle, trusting to future investigation to show a mistake of

fact and enable him to recover back the amount paid. One course encourages carelessness and breeds litigation after witnesses have passed beyond the reach of the parties; the other encourages parties in ascertaining what the facts and circumstances actually are while the transaction is fresh in the minds of all, and a final and peaceful settlement thereof."

20. *McGoren v. Avery*, 37 Mich. 120.

21. *Isle Royale Mining Company v. Hertin*, 37 Mich. 332. See *Wetherbee v. Green*, 22 Mich. 311.

22. *Wright v. Dickinson*, 67 Mich. 580.

23. *Wayne County v. Randall*, 43 Mich. 137.

INTRODUCTION.

Money Paid under Compulsion.

In the recovery of money paid under compulsion, the rule may be stated that where a sale of real estate assessed would constitute a cloud upon the title, the party pays under compulsion and may afterwards in an action of assumpsit recover back the amount of the illegal exaction, but where the amount assessed upon the plaintiff's lot was illegal and void and the proper officer threatened to sell the lot if the assessment was not paid and the plaintiff paid the money under protest, no action for the recovery of the money will lie²⁴. The rule in respect to personal property is that any payment is to be regarded as involuntary, which is made under a claim involving the use of force as an alternative, as the party of whom it is demanded cannot be compelled or expected to await actual force, and cannot be held to expect that an officer will desist after once making demand. It is the exhibition of the warrant directing forcible proceedings, and the receipt of money paid thereon which acts are equivalent to actual compulsion. Thus, a payment made on the demand of an officer under legal process, is not voluntary, although made before any levy. A party is not bound to await an arrest or seizure, but may assume that the officer will execute the process on which he makes demand and no protest is necessary in such case to authorize an action to recover back the money illegally demanded; but where payment is made without protest, no interest can be claimed until after demand, or suit²⁵.

Duress.

The modern doctrine of duress is founded upon actual or threatened violence or restraint contrary to law by which one is compelled to enter into or discharge a contract. Thus, where money was procured by threats of criminal prosecution from an aged person who was infirm and ignorant, an action to recover the money will be sustained²⁶, but where money was paid under a mere threat of criminal prosecution under circumstances not

24. *Detroit v. Martin*, 34 Mich. 170.

25. *Atwood v. Zeluff*, 26 Mich. 118.

26. *Cribbs v. Soule*, 87 Mich. 340.

CONTRACTS IN MICHIGAN.

authorizing the belief that there is immediate danger of arrest without an opportunity of being heard, no action will lie for the recovery of the money and the payment will be deemed voluntary²⁷.

Statute of Frauds.

It is manifest that where a party sues to recover on a count for work and labor which he has not been allowed to do, a sum equivalent to that which he would have been entitled had he performed the contract, an action to sustain the assumed contractual relation will not lie, for the object of the action is to prevent the unjust enrichment of the defendant and not to recover damages for breach of contract²⁸. On the other hand where a contract is void under the Statute of Frauds, a recovery may be allowed upon the principle that money paid by one of the parties in consequence, or on the faith of the contract, may be recovered back, as if it had come into the hands of the party receiving it, without such contract, and therefore for the use of the party paying it²⁹.

Statutory Right.

This assumed contractual relation may have its foundation in a statute, for it allows assumpsit to be brought on judgments and sealed instruments³⁰, also for penalties and forfeitures³¹, and by commissioners of highways for expenses laid out on bridges required to be maintained by private parties³².

In General.

In general it may be said that where a person receives, takes, or is paid money, under a contractual relation or obligation, from another, who has the right to rescind this relation on the ground of fraud, mistake, undue influence, or duress or on the ground of want of capacity to contract or on the ground of failure of consideration, or on account of a breach of his contract by the other operating as a discharge, he may, on rescinding the contract, bring action upon the assumed contractual relation or obligation

27. *Betts v. Reading*, 93 Mich. 77.

28. *Moore v. Nasen*, 48 Mich. 300.

29. *Scott v. Bush*, 29 Mich. 523.

30. C. L. '97, §10417.

31. C. L. '97, §9797-§9802.

32. C. L. '97, §4057.

INTRODUCTION.

for money had and received i. e. to recover the amount paid as money received for his use.

FORMAL DOCUMENTS.

There are some contractual relations and obligations which must be expressed in formal documents³³, and some others which must be in form required by the law of evidence, and the Statute of Frauds and the Statute of Limitations³⁴.

CONTRACTUAL RELATION. DEFINITION.

Contractual relation or obligation may be defined as that right which one has to control the conduct of another by calling upon him to do some particular thing or to forbear from doing some particular thing, and inherent in this relationship is that quality by which the law binds the parties to the performance of the agreement.

E. *Transition from Validity to Invalidity. Intention.*

A contract may contain all the essential elements and from this standpoint be valid, yet it may be invalid for the reason that the relation contemplated was not intended by the parties to be legal and therefore no contract could result³⁵. Though a contract is valid and legal as far as its internal structure is concerned, and its illegality does not show on its face, it may be shown by competent evidence what the intention and object of the contract was, by inquiring fully into the interviews and knowledge of the parties, so as to show, by their dealings, the construction that the parties themselves placed upon the contract³⁶, and if this evidence shows an unlawful purpose the contract will be declared illegal³⁷. Neither will a contract otherwise legal, become illegal unless both parties participated in the illegality by uniting in the intent³⁸.

F. *Invalidity, Void, Voidable, Rescission, Illegal, Unenforcible.*

By invalidity is meant that quality in which a contract is an absolute nullity, legally insufficient or incomplete in obligation.

33 See Chapter II.

34. See Chapter III.

35. Keller v. Holderman, 11 Mich. 248.

36. Detroit Salt Co. v. National

Salt Co., 134 Mich. 103.

37. Detroit Salt Co. v. National Salt Co., 134 Mich. 103.

38. Gregory v. Wendell, 40 Mich. 432.

CONTRACTS IN MICHIGAN.

The internal limitations essential to validity have been discussed. It is now the external limitations which require attention and first those affecting assent. Before entering upon this subject, it will be well to define and distinguish between void and voidable.

VOID AND VOIDABLE.

In general it may be said that that is absolutely void which the law, or the nature of things, forbids to be enforced, while that is relatively void which the law condemns as a wrong to individuals and refuses to enforce as against them. In the first instance the matter is an absolutely nullity and insusceptible of ratification; in the second instance when either party is bound it is susceptible of ratification, and therefore only voidable. A contract is absolutely or relatively void in that it is either absolutely or relatively invalid or not binding. Now if the free assent of the will is interfered with through mistake, fraud, or duress the contract is voidable.

Fraud.

The general rule is that fraud does not render a contract void, but voidable at the option of the party who has been defrauded. Thus, fraudulent representations as to legal operation and effect of a written instrument will be sufficient to avoid the same when made to a party who is able to read, or who has actually read the instrument, but who is unable to determine its true character and construction. To have this effect the fraud must be contemporaneous with its execution, and must consist in obtaining the assent of the party defrauded, by inducing false impression as to its legal or literal nature and operation³⁹.

Mistake.

The general rule regarding mistake is that a contract made under a mistake or in ignorance of a material fact is not void,

39. *Berry v. Whitney*, 40 Mich. 65. See other cases: *Simpson v. Crane*, 149 Mich. 352; *Tradesman Co. v. Superior Mfg. Co.*, 147 Mich. 702; *Macklem v. Fales*, 130 Mich. 66; *Grosbeck v. Bennett*, 109 Mich. 65;

Gardner v. Gardner, 106 Mich. 18; *Fowle v. Dunham*, 76 Mich. 251; *Mayher v. Phoenix Ins. Co.*, 23 Mich. 105; *Gibbs v. Linabury*, 22 Mich. 479, 7 Am. Rep. 675; *Beebe v. Young*, 14 Mich. 136; *Jones v. Wing*, Har. 301.

INTRODUCTION.

but voidable. Although the mistake of facts is caused by the negligence of one party, he is not precluded thereby from availing himself of the mistake if the other party can be relieved of any prejudice caused thereby⁴⁰, where under a misapprehension of the facts the parties agreed upon a settlement but before the agreement was carried out they both learned of the situation, and the defendants stopped payment of the check which they had given in settlement, this act was deemed justifiable⁴¹.

Duress.

The general rule is, to constitute duress there must be undue and illegal force used, or the party made to endure unnecessary and unlawful privation, to avoid such illegal hardships or privation⁴². In a case⁴³ Justice Cooley said: "Duress exists when one by the unlawful act of another is induced to make a contract or perform some act under circumstances which deprive him of the exercise of free will. It is commonly said to be of either the person or the goods of the party. Duress of the person is either by imprisonment, or by threats, or by an exhibition of force which apparently cannot be resisted; while duress of goods may exist when one is compelled to submit to an illegal exaction in order to obtain them from one who has them in possession but refuses to surrender them unless the exaction is submitted to."

In general a distinction is usually made where contracts are entered into under duress. If the consent of one of the parties is obtained under circumstances that his will is not free, the contract is voidable, while if his consent is obtained by force or if he was so prostrated by fear that he did not know what he was doing, the contract is void.

40. *State Sav. Bank v. Buhl*, 120 Mich. 193. See other cases: *Milks v. Milks*, 129 Mich. 164; *Pittsburgh & L. A. Iron Co. v. Lake Superior Iron Co.*, 118 Mich. 109; dismissed same v. *Cleveland Iron Min. Co.*, 178 U. S. 270, 44 L. Ed. 1065; *Sanborn v. Sanborn*, 104 Mich. 180; *Hobbs v. Brush Electric Light Co.*, 75 Mich. 550; *Anderson v. Walter*,

34 Mich. 113; *Tenney v. Hand*, 32 Mich. 63; *Holmes v. Hall*, 8 Mich. 66, 17 Am. Dec. 414.

41. *State Sav. Bank v. Buhl*, 120 Mich. 193.

42. *Rood v. Winslow*, 2 Doug. 68.

43. *Hackley v. Headley*, 45 Mich.

569. See other cases: *Knight v. Brown*, 137 Mich. 396; *Goebel v. Linn*, 47 Mich. 489; *Selber v. Green*, 26 Mich. 70.

CONTRACTS IN MICHIGAN.

COMPETENCY. INFANTS.

The various legal incapacity of parties ordinarily rests upon age, marital relation and mental weakness and disease. In general it may be said that contracts made by infants are valid when they are clearly beneficial to his interest, and they are voidable at his option when they are doubtful as to whether they are advantageous or prejudicial⁴⁴, but when essentially prejudicial they are absolutely void⁴⁵.

Married Women.

The rule has been uniformly established, regarding the power of married women to contract, under C. L. '97, §8690, that a married woman is not authorized to become personally liable on an executory promise except concerning her separate estate, and any contract so entered into is absolutely void⁴⁶. This power is statutory and cannot be extended beyond the constitutional and statutory limits⁴⁷.

Insane Persons.

In the case of insane persons the rule is that contracts made with insane persons are void while contracts with persons of weak minds are voidable⁴⁸, and the doctrine is well established that the deed of a lunatic *who has not been placed under guardianship* is not absolutely void, but merely voidable⁴⁹.

Drunkards.

A drunkard is not an incompetent, like an idiot, or one generally insane, but simply incompetent upon proof that, at the time of the act, his understanding was clouded, or his reason

44. Dunton v. Brown, 31 Mich. 182.

45. Dunton v. Brown, 31 Mich. 182. See other cases: Lansing v. Mich. Cent. R. Co., 126 Mich. 663; Welch v. Olmstead, 90 Mich. 492; Loomis v. O'Neal, 73 Mich. 582; Durfee v. Abbott, 61 Mich. 471; Widrig v. Taggart, 51 Mich. 103; Armitage v. Widoe, 36 Mich. 124.

46. Johnson v. Sutherland, 39 Mich. 579.

47. Kenton Ins. Co. v. McClellan,

43 Mich. 564. See other cases: Feather v. Feather's Estate, 116 Mich. 384; Mutual Ben. Life Ins. Co. v. Wayne County Sav. Bank, 68 Mich. 116; Post v. Shafer, 63 Mich. 85; Edwards v. McEnhill, 51 Mich. 160; Russell v. People's Sav. Bank, 39 Mich. 671, 33 Am. Rep. 144; Jenne v. Marble, 37 Mich. 319; Kitchell v. Nudgett, 37 Mich. 81.

48. Gates v. Cornett, 72 Mich. 420; Reason v. Jones, 119 Mich. 672.

49. Wolcott v. Conn. Life Ins. Co., 137 Mich. 309.

INTRODUCTION.

dethroned, by actual intoxication⁵⁰. The doctrine relating to contractual relation under this circumstance is to the effect that a contract made by a person so under the influence of intoxicants as to be ignorant of what he is doing is only voidable⁵¹.

RESCISSION.

The effect of voidable contracts is to give the right of rescission to the party not bound and in the case of a voidable written contract, the party upon whom the obligation is not binding, is given a remedial right to the rescission of the contract by the courts. Contracts that are subject to rescission are such that are voidable on the ground of fraud, misrepresentation, undue influence, duress⁵², or on the ground of want of capacity in cases of infancy, married women, insanity and drunkenness⁵³ or on the ground of invalidity, illegality⁵⁴ or mistake⁵⁵, failure of consideration⁵⁶ or failure of performance or breach⁵⁷, or where a verbal agreement which has been carried out in part, referred for its terms to another contract in writing but which was never executed, the verbal agreement is valid and it cannot be rescinded so as to undo what has been earned under it⁵⁸. The right to rescind also exists when there has been a material change in the subject-matter, before the final consummation of the agreement, brought about by the act of one of the parties, which the party rescinding did not authorize or to which he did not assent⁵⁹. It is well settled that a court of equity has jurisdiction to decree the rescission of a contract for non-performance⁶⁰. Rescission takes place where a party to a contract within a reasonable time after refusing performance demands a settlement and restoration to the former status, and the parties negotiate accordingly⁶¹.

50. *Wright v. Fisher*, 63 Mich. 275.

51. *Carpenter v. Rodgers*, 61 Mich. 384.

52. See notes above.

53. See notes above.

54. *Niagara Falls Brewing Co. v. Wall*, 98 Mich. 158. See *Van Nordsall v. Smith*, 141 Mich. 355.

55. See notes above.

56. *Harris v. Platt*, 64 Mich. 105.

57. *Seymour v. Detroit Copper &*

Brass Rolling Mills, 56 Mich. 117.

58. *Sovereign v. Ortman*, 47 Mich. 181. See *Stearns v. Lake Shore & M. S. Ry. Co.*, 112 Mich. 651.

59. *Harris v. Platt*, 64 Mich. 105.

60. *City of Grand Haven v. Grand Haven Waterworks*, 99 Mich. 106.

61. *Seymour v. Det. C. & B. Rolling Mills*, 56 Mich. 117. See *Peabody v. Bement*, 79 Mich. 47.

CONTRACTS IN MICHIGAN.

Condition to Rescission.

The condition precedent to rescission is that the parties are restored to their former status, i. e. placed in *statu quo*. Where one has been induced to enter into a contract by the fraudulent representation of the other party, he may on discovery of the fraud affirm or disaffirm the contract. This election he has a right to exercise, but he cannot do both⁶². The assertion of the right to affirm is a renunciation of the right to disaffirm and *vice versa*. In the event of a part performance in order to effect a rescission, the party must return or tender the consideration or benefit received⁶³.

Laches.

The principle is established that a party defrauded in a contract will not be debarred of his rights, unless his delay to assert them amounts to a waiver or he unconsciously does some act which will prevent the other party from being put in as good condition as he was in the beginning⁶⁴, but a contract valid on its face, and actually carried out in full with the acquiescence of all concerned, cannot be subsequently rescinded⁶⁵.

Time.

It is essential that a party move promptly, if he seeks to rescind his contract on the ground of fraud⁶⁶, for the rescission must be done within a reasonable time⁶⁷. In order to effect a rescission, it is sufficient that a demand be made, for a demand imparts notice of an election that both parties be remitted to their original rights and duties⁶⁸.

Operation.

The principle is well founded that a party cannot rescind a contract and then insist on damages for non-performance; for when

62. Jewett v. Petit, 4 Mich. 508; Galvin v. O'Brien, 96 Mich. 483.

63. Dunks v. Fuller, 32 Mich. 243; Crippen v. Hope, 38 Mich. 344.

64. Martin v. Ash, 20 Mich. 166; Hubbardston Lumber Co. v. Bates, 31 Mich. 158; Buck v. Coward, 122 Mich. 530.

65. Halloway v. Ogden School

Dist. No. 9, 62 Mich. 153.

66. Wright v. Peet, 36 Mich. 213.

67. Jewett v. Petit, 4 Mich. 508; Carroll v. Rice, Walk. Ch. 373. See other cases: Cornell v. Crane, 113 Mich. 400; Dunks v. Fuller, 32 Mich. 242; Hubbardston Lumber Co. v. Bates, 31 Mich. 158; Wilbur v. Food, 16 Mich. 40, 93 Am. Dec. 203.

68. Place v. Brown, 37 Mich. 575.

INTRODUCTION.

a contract is rescinded, an action will not lie for the breach of it⁶⁹, and it is apparent that a defrauded party cannot set up an implied contract and sue the other party after rescinding an express contract⁷⁰.

ILLEGAL.

In general it may be said that parties may make and carry out any agreement they please which does not affect the public or the rights of third persons, but in case of dispute they must not expect courts to enforce any unconscionable bargain they may have thought proper to make⁷¹, and it is a well founded rule that persons shall not only contract and transact *bona fide* between themselves, but they shall not contract or transact *mala fide* in respect to third persons who stand in such a relation to either of the original parties as to be affected by the contract or the consequence of it⁷².

Classification of Illegal Contracts.

First, there are those contracts which are expressly prohibited by legislative authority⁷³.

Second, there are those contracts the object of which is to do a prohibited act⁷⁴.

69. Hubbardston Lumber Co. v. Bates, 31 Mich. 158.

70. Galloway v. Holman, 1 Doug. 330. See Hayes v. Stortz, 131 Mich. 63; Glover v. Radford, 120 Mich. 542; Kimmerle v. Hass, 53 Mich. 341; Hosmer v. Wilson, 7 Mich. 294. Option to rescind: See Aldine Press v. Estes, 75 Mich. 100. Abandonment of rights: See Greenwood v. Davis, 106 Mich. 230.

71. Myer v. Hart, 40 Mich. 517, 20 Am. Rep. 553.

72. Huxley v. Rice, 40 Mich. 73.

73. Heffron v. Daly, 133 Mich. 613.

Violation of Sunday Statutes: Adams v. Hamell, 2 Doug. 73; Fisher v. Kyle, 27 Mich. 454; Searles v. Reed, 63 Mich. 485; Hoard v. Stone, 58 Mich. 578; Saginaw T. & H. R. Co. v. Chappell, 56 Mich. 191; Beman v. Wessels, 53 Mich. 549;

Brazee v. Bryant, 50 Mich. 126; Winfield v. Dodge, 45 Mich. 355; O'Rourke v. O'Rourke, 43 Mich. 58; Allen v. Duffie, 43 Mich. 1; Lamore v. Frisbie, 42 Mich. 186; Hall v. Parker, 37 Mich. 590; Van Sickle v. People, 29 Mich. 61; Fisher v. Kyle, 27 Mich. 454; Vinton v. Peck, 14 Mich. 287; Tucker v. Mowrey, 12 Mich. 378.

Violation of other statutes: Hannah v. Fife, 27 Mich. 172; Hall v. Kimmer, 61 Mich. 269.

74. Rhoades v. Malta Vita Pure Food Co., 149 Mich. 235; Zazel v. New State Telephone Co., 127 Mich. 402; McDonnell v. Rigney, 108 Mich. 275; Cleveland v. Miller, 94 Mich. 97; Wilbur v. Stoepel, 82 Mich. 344; Davis v. Seeley, 71 Mich. 209; McNamara v. Gargett, 68 Mich. 454; Thomas v. Caulkett, 57 Mich. 302; Sanford v. Huxford, 32 Mich. 313.

CONTRACTS IN MICHIGAN.

Third, there are those contracts in which it is agreed to do an act prohibited by law⁷⁵.

Fourth, there are contracts in which it is contemplated to do an injury to the legal rights of a third party⁷⁶.

Fifth, there are contracts in which the provisions contravene public policy⁷⁷.

20 Am. Rep. 647; Flint & P. M. R. Co. v. Dewey, 4 Mich. 477.

Immorality: Case v. Smith, 107 Mich. 410, 31 L. R. A. 282, 61 Am. St. Rep. 341.

75. Koons v. Vanconsant, 129 Mich. 260, 95 Am. St. Rep. 438; Beath v. Chapoton, 115 Mich. 500; Miller v. Minor Lumber Co., 98 Mich. 163, 39 Am. St. Rep. 524; Wolf v. Troxell's Estate, 94 Mich. 573; Meech v. Lee, 82 Mich. 274; Fosdick v. Arsdale, 74 Mich. 302; Lyon v. Waldo, 36 Mich. 345; Wisner v. Bardwell, 38 Mich. 278.

76. Fuller v. Rice, 52 Mich. 435.

77. Leggett v. City of Detroit, 137 Mich. 247; Hubbard v. Freiburger, 135 Mich. 139; De Boer v. Harmon, 131 Mich. 91; Michigan Cent. R. Co. v. Pere Marquette R. Co., 128 Mich. 333; Crane v. Bagley, 128 Mich. 323; Case v. Smith, 107 Mich. 416; May v. Newman, 95 Mich. 501; Webster v. Sibley, 72 Mich. 630; Watrous v. Allen, 57 Mich. 362, 58 Am. Rep. 363; Myer v. Hart, 40 Mich. 517, 29 Am. Rep. 553.

Restraint or derogation of marriage: McCurdy v. Duton, 135 Mich. 678; Duffy v. White, 115 Mich. 264; Jordan v. Westerman, 62 Mich. 170; Huxley v. Rice, 40 Mich. 73.

Restraint of trade or competition in trade: Hunt v. Riverside Co-operative Club, 140 Mich. 538, 12 Am. St. Rep. 420; Clark v. Needham, 125 Mich. 84, 51 L. R. A. 785; 84 Am. St. Rep. 559; Bingham v. Brands, 119 Mich. 255; Lovejoy v. Michels, 88 Mich. 15, 13 L. R. A. 770; Richardson v. Buhl, 77 Mich. 632; Hubbard v. Miller, 27 Mich. 15, 15 Am. Rep. 153; Gate v. Village of Kalamazoo, 23 Mich. 344, 9 Am. Rep. 80.

Partial restraint: Buck v. Cow-

ard, 122 Mich. 530; Up River Ice Co. v. Denler, 114 Mich. 296; 68 Am. St. Rep. 480; O. & W. Thum Co. v. Tloczynski, 114 Mich. 149, 38 L. R. A. 200, 68 Am. St. Rep. 469; Western Woodenware Ass'n v. Starkey, 84 Mich. 96, 11 L. R. A. 503, 22 Am. St. Rep. 686, distinguishing Hubbard v. Miller, 27 Mich. 15, 15 Am. Rep. 153, and Beal v. Chase, 31 Mich. 490; Timmerman v. Dever, 52 Mich. 34, 50 Am. Rep. 240.

Contracts designed to injure the Public Service: Fisher Electric Co. v. Bath Iron Works, 116 Mich. 293; Foley v. Platt, 105 Mich. 635; Burk v. Webb, 32 Mich. 173; O'Hara v. Carpenter, 23 Mich. 410, 9 Am. Rep. 89.

Gambling contracts: Davis v. Seeley, 71 Mich. 209; McNamara v. Gargett, 68 Mich. 454; Stanley v. Nye, 51 Mich. 232; Raymond v. Leavitt, 46 Mich. 447; Gregory v. Wendell, 40 Mich. 432; Gregory v. Wendell, 39 Mich. 337; Grapo v. Seybold, 36 Mich. 444; Buckley v. Saxe, 10 Mich. 328; Whitwell v. Carter, 4 Mich. 329.

Contracts affecting election or appointment: Harris v. Chamberlain, 128 Mich. 280.

Contracts influencing legislation: Robinson v. Patterson, 71 Mich. 141; Beal v. Polhemus, 67 Mich. 130.

Contracts interfering with the administration of justice: Vreeland v. Turner, 117 Mich. 366, 72 Am. St. Rep. 366; Crisun v. Grosslight, 79 Mich. 380; Willemijn v. Bateman, 63 Mich. 309; Detroit Savings Bank v. Truesdell, 38 Mich. 430; Buck v. First National Bank, 27 Mich. 293, 15 Am. Rep. 189; Carlisle v. Spain, 147 Mich. 158; Hoste v. Dalton, 137 Mich. 522; Raymond v. Farmers' Mut. Fire Ins. Co., 114 Mich. 380;

INTRODUCTION.

Thus, illegality springs from two sources, statute and common law. At common law the illegality lies in its being in violation of morality or opposed to public policy, while under statutory law the illegality lies in its prohibition by enactment.

Distinction between Illegal and Void Contracts.

In the imposition of external limitations upon the freedom of contract, the law has created a distinction between contracts in which some unlawful object against public policy is sought to be accomplished and contracts in which the object is deemed not unlawful as against public policy, but, nevertheless, unlawful in the sense that the court refuses to enforce them. The distinction is essential only in so far as the illegality of the object affects the rights and obligations of other transactions, but no such contingency can arise under contracts which the law refuses to enforce. Void contracts comprise a larger class than illegal in that it includes a large number of contracts which are unenforcible and in which the element of illegality is wanting. It must be borne in mind that illegal contracts besides being unenforcible, possess the quality of rendering any transaction too closely connected with the illegal contract void. Acts that are solely *ultra vires* are not illegal, but void. The term void is frequently loosely used. Courts often speak of acts and contracts as void when they mean no more than that some party concerned has a right to avoid them⁷⁸, i. e. they are voidable. It is manifest that if an act or contract is prohibited and declared void on the ground of general policy, the legislative intent is that it is void to all intents and purposes, while if the manifest intent is to give protection to determinate individuals who are *sui juris*, the purpose is sufficiently accomplished if they are given the liberty of avoiding it⁷⁹.

Utter v. Travelers' Ins. Co., 65 Mich. 543.

Contracts preventing competition for public work: Hannah v. Fife, 27 Mich. 172.

Contracts influencing the conduct of administrative officers: Robinson v. Paterson, 71 Mich. 141; Davis v. Ransom, 4 Mich. 238.

Contracts to prevent competition

at judicial sale: Fletcher v. Johnson, 139 Mich. 31; Fisher v. Hampton Transp. Co., 136 Mich. 218, 112 Am. St. Rep. 358; Culver v. Nestor, 116 Mich. 191.

78. Beecher v. Marquette and Pacific R. M. Co., 45 Mich. 103.

79. Beecher v. Marquette and Pacific R. M. Co., 45 Mich. 103.

CONTRACTS IN MICHIGAN.

General Rules as to Illegal Contracts.

The general rules relating to illegal contracts are that when the object or purpose of an agreement is to accomplish an unlawful purpose, the contract is illegal⁸⁰, or where the consideration for a promise is illegal⁸¹, or where the tendency of a contract is to accomplish an illegal result, or a legal result by illegal means⁸², or where parties intend to perform a contract in an illegal manner, although the contract is susceptible of being performed in a legal manner, but where a contract is susceptible of an illegal use by one of the parties and he intends such illegal use to be made of it, while the other party intends and executes the contract in a lawful manner, the contract is valid⁸³. It is a presumption of the law that the legality of a contract as against its illegality is to be favored, and the general rule for interpretation is that a contract should be so construed as to give it validity, but where the intention is manifest that the parties intended to enter an illegal contract, the presumption will not be applied for the purpose of giving validity to the contract.

Contracts Connected with Illegal Ones.

The general rule is that subsequent contracts are valid, if they be unconnected with the illegal act, and are based on a new consideration, although they may have grown out of the illegal transaction, and the party to whom the promise was made, may have had knowledge of the illegal act⁸⁴. Courts recognize the general distinction that those contracts are invalid which are directly connected with the illegal transaction, while those are valid that are indirectly connected with it⁸⁵. Thus, where money may have been paid on an illegal contract, as its consideration, a new contract to repay it is valid, or where money is lent or advanced on a security which is declared void by provision of law, a new security for the money paid, or a new promise to pay it, is valid.

80. State v. How, 1 Mich. 512.

Mich. 432.

81. Smith v. Barstow, 2 Doug.
155.

84. Smith v. Barstow, 2 Doug.
155.

82. McNamara v. Gargett, 68
Mich. 454.

85. Smith v. Barstow, 2 Doug.
155.

83. Gregory v. Wendell, 40

INTRODUCTION.

In pari delicto portior est conditio defendentis.

The rule underlying this maxim is not always absolute in its application, for it has limitations which are not always clearly defined. It is essential that both parties shall be *in pari delicto*, and where one of the parties is slightly to blame, the rule does not obtain⁸⁶. Where a bond is given by an outgoing city treasurer to his successor to secure the performance of one agreement between the two, pursuant to which the obligee became a candidate for said office and the obligor for mayor, who was to continue to perform all of the duties of treasurer, he being at the time a defaulter, which fact was unknown to the public, but was communicated to said obligee, the bond is not valid for any purpose and both parties are *in pari delicto*⁸⁷.

UNENFORCEABLE.

The unenforceability of a contract rests in the non-compliance with the requirements of the law, for when there are no grounds for recovery manifested, the contract is necessarily unenforceable⁸⁸. Thus, where the bargain is of no force to constitute a contract and create contractual relations, an attempt to resort to making such a relation by implication will not render it enforceable, for the only consequence of the attempt to imply a promise would therefore be to imply it against a third person and indirectly negative the making of any promise by the party charged⁸⁹. A contract to procure the conveyance of an equity of redemption held by a third person is unenforceable, because it is within the statute of frauds, and is void if not in writing⁹⁰.

G. *Valid Contract. Definition.*

An enforceable contract at law must be entered into by competent parties and the contractual relation must be legal in that the offer and acceptance, not only must be acted upon so as to manifest consideration, but must meet in one and the same inten-

⁸⁶. Barnes v. Brown, 32 Mich. 146.

⁸⁷. Cobbs v. Hixon, 75 Mich. 260.

⁸⁸. Liddle v. Needham, 39 Mich. 147.

⁸⁹. Liddle v. Needham, 39 Mich. 147.

⁹⁰. Rawson v. Dodge, 40 Mich. 697; see Rigley v. Louvey, 45 Mich. 370; De Moss v. Robinson, 46 Mich. 62.

CONTRACTS IN MICHIGAN.

tion and mutuality which must be definite and clear, legal in object, and must be free from mistake, fraud, undue influence and must not be procured by duress, and must conform wherever necessary to the form required by law.

INTENTION.

Intention has much to do in the interpretation of the validity of contract. It is the duty of courts to ascertain the intention of the parties in construing a contract so as to enforce its provisions and not to create or obligate them⁹¹, and they must give effect to the contract according to the clear intent of the parties as expressed⁹². The intention must be determined from the surrounding circumstances as well as from the interpretation of the words by taking as nearly as possible the position occupied by the parties when they made use of them to evidence their intent⁹³.

H. Ex Nudo Pacto Non Oritur Actio.

This maxim forms a transition from contractual obligation to liability, i. e., by asserting practically that in order to support an action on contract, the contractual relation in a simple contract must be founded on consideration.

III. Contractual Liability.

I. Enforcement. Valid or Legal Contract.

Contractual liability depends upon the nature of the contractual relation or obligation. A contractual liability arises on a valid unilateral contract, or on a valid bilateral contract when in the first instance, the promisor, and in the second instance, either party, or in the case of a voidable contract, the party bound, refuses, prevents, or fails in performance thereby breaking the contractual relation or obligation, or by breaking the

91. Thayer v. Augustine, 55 Mich. 187.

92. Chippewa Lumber Co. v. Phoenix Ins. Co., 80 Mich. 116.

93. Ferris v. Wilcox, 51 Mich. 105. See Hudson v. Columbian Lumber Co., 137 Mich. 255, 109 Am. St. Rep. 679; Rundle v. Scully, 144 Mich. 62; Butler v. Iron Cliff Co.,

96 Mich. 70; Bassett v. Budlong, 77 Mich. 338; Smith v. Smith, 71 Mich. 633; Matthews v. Phelps, 61 Mich. 327, 1 Am. St. Rep. 581; Morgan v. Michigan Air Line R. Co., 57 Mich. 430; Norris v. Showerman, 2 Doug. 16; Bird v. Hamilton, Walk. Ch. 361; Bronsen v. Green, Walk. Ch. 36. See §21.

INTRODUCTION.

assumed contractual obligation growing out of a transaction where a party takes money from another, who has the right to rescind the relation on the ground of fraud, mistake, undue influence, or duress, or on the ground of want of capacity to contract, or on the ground of failure of consideration, or on account of a breach of his contract by the other operating as a discharge. The contractual relation or obligation is broken when a party under an entire contract to lumber several tracts of land sells a tract of land included in the contract⁹⁴, or where a contract between adjacent owners to build a box drain binding each to build one end and requiring the lower proprietor to keep his end of the drain open, the party, neglecting to open an outlet on his land below the proposed drain to carry off the water, thereby making it impossible to begin work on the drain itself, is liable⁹⁵, or where a contract to deliver is broken by the sale to a third party of goods covered by it⁹⁶, or where a contract to allow one to use a patented improvement is broken by suing out and serving an injunction to restrain him from doing so⁹⁷. On the other hand where a party fails to comply substantially with an agreement he cannot sue or recover upon the agreement at all, unless it is apportionable⁹⁸.

J. Enforcement. Invalid or Illegal Contracts.

The maxims *ex turpi causa non oritur actio* and *ex dolo malo non oritur actio* apply to all illegal contracts and equally so does the maxim *in pari delicto portior est conditio defendentis* where both parties are at fault. Courts of justice will not aid the parties to illegal contracts to carry them into effect⁹⁹. The law, in

94. *Lee v. Briggs*, 99 Mich. 487. See *Brown v. Hazen*, 11 Mich. 219; *Armstrong v. Andrews*, 109 Mich. 537.

95. *Britton v. Dunning*, 55 Mich. 158.

96. *Hart v. Summers*, 38 Mich. 399.

97. *Sullings v. Goodyear, etc., Co.*, 36 Mich. 313.

98. *Allen v. McKibben*, 5 Mich. 449.

99. *Smith v. Barstow*, 2 Doug.

155. See other cases: *Erpelding v. McKearnan*, 143 Mich. 400; *Walthier v. Weber*, 142 Mich. 322; *Bryant v. Wilcox*, 137 Mich. 669; *Fisher v. Hampton Transp. Co.*, 136 Mich. 218, 112 Am. St. Rep. 358; *McDonald v. Borne*, 135 Mich. 177; *Kopitz-Melcher Brewing Co. v. Behm*, 130 Mich. 649; *Niagara Falls Brewing Co. v. Wall*, 98 Mich. 158; *Cleveland v. Miller*, 94 Mich. 97; *Richardson v. Buhl*, 77 Mich. 632, 6 L. R. A. 457; Mich. Ben. Ass'n

CONTRACTS IN MICHIGAN.

cases where a contract in violation of law has been carried into effect, will not aid either party, but leaves them to reap the reward of their own folly¹⁰⁰. Hence, if the contract is executory the court will not enforce it, or give damages for a non-performance, and if executed, it will not undo what the parties themselves have done, by divesting the title that has passed¹⁰¹. The principle of public policy is invoked by the courts in this case for the purpose of preventing relief being given to either party from the consequence of the illegal transaction, just the same as in the case where courts refuse to act when called upon to enforce contracts. Courts of their own motion will take notice of illegal contracts which come before them for adjudication, and they will not relieve a party from loss by having performed it in part¹⁰². Again, a party to show his own fraud in his own defense in an illegal transaction which is against public policy must not only be *in delicto*, but in *pari delicto*; for though he may to some extent have participated in the illegal transaction, yet, if not equally guilty with the defendant, or at least, if there be strong mitigating circumstances in his favor, the defendant will not be allowed to avail himself of this defense¹⁰³.

The only rigid rule forbidding relief is where the parties are *in pari delicto*, and the law does not draw fine distinctions in ascertaining equality of wrong¹⁰⁴. Neither is actual knowledge of legal rights and liabilities always conclusive against relief¹⁰⁵. The principle is established that courts of equity will grant relief in many cases of illegal contract against public policy where there is no legal duress in the strict acceptance of the term, and where the wronged party would be remediless at common law¹⁰⁶.

v. Hoyt. 46 Mich. 473.

Partial illegality: Edwards v. Tontine Inv. Co., 132 Mich. 1; McNamara v. Gargett, 98 Mich. 44, 13 Am. St. Rep. 355; Fosdick v. Van Arsdale, 74 Mich. 302; Wisner v. Bardwell, 38 Mich. 278; Snyder v. Willey, 33 Mich. 483.

100. Bagg v. Jerome, 7 Mich. 145

101. Bagg v. Jerome, 7 Mich. 145.

102. Richardson v. Buhl, 77 Mich. 632, 6 L. R. A. 457.

103. Quirk v. Thomas, 6 Mich. 77.

104. Hess v. Culver, 77 Mich. 598, 18 Am. St. Rep. 421.

105. Wartenberg v. Spiegel, 31 Mich. 400.

106. Meech v. Lee, 82 Mich. 274.

INTRODUCTION.

K. Unumquodque Dissolvitur Eodem Ligamine Quo et Ligatur.

This maxim and the one of like meaning, *unumquodque eodem modo quo colligatum est dissolvitur*, i. e., in the same manner in which everything is bound it is dissolved, found application at common law, but they have now lost their significance and effect as rules of law, for the reason that the rules of procedure by which the rules of evidence were classified relating to the subject, have been changed. However, they may find application in so far as a discharge may be effected by agreement in that a contract may be dissolved or discharged in the same manner as it was created, i. e., by mutual agreement. It will now suffice to call attention to some of the methods of discharge.

Performance.

It is self-evident that the performance of an obligation discharges that obligation. The rule is established that substantial performance is sufficient to satisfy the law¹⁰⁷, or where a party fails to comply substantially with an agreement, he cannot sue or recover upon the agreement at all, unless it is apportionable¹⁰⁸.

Tender.

It is apparent that tender is not equivalent to performance, yet a tender of the amount due upon a mortgage, if made in such a manner that the holder of the mortgage understands it at the time as a present, absolute and unconditional tender thereof, operates *ipso facto*, to discharge the lien of the mortgage, though the tender be not thereafter kept good¹⁰⁹.

Waiver.

An agreement to waive damages made after delivery and nothing remaining to be done, would be without consideration; but it is not so where something is still to be done, and the performance of which is founded upon the consideration of the waiver¹¹⁰.

107. *Peer v. Kean*, 14 Mich. 384.

108. *Allen v. McKibben*, 3 Mich.

440. *Potts v. Plaisted*, 30 Mich.

149.

110. *Moore v. Detroit Locomotive Works*, 14 Mich. 266.

CONTRACTS IN MICHIGAN.

New Contract.

It is well settled that a new contract may discharge a previous one and this circumstance may be inferred from the fact that the former is inconsistent with the latter. A substitution of new parties to a contract whereby a new agreement is created discharges the same¹¹¹.

Renunciation.

Repudiation has no greater effect than breach of contract in putting an end to contract. Neither puts an end to the contract, but the injured party only is entitled to terminate and end the same. The silence of the plaintiffs gave defendants to understand that they had no further interest in the contract, as plainly as if express notice had been given of the fact, and the defendants had a right to rely on the fact that the contract had been rescinded, abandoned or *repudiated* and damages waived, which might be done by mutual consent, thereby effecting a discharge¹¹².

Merger.

Merger is the extinguishment by operation of law of debts of different degrees whereby the lower is lost in the higher. It takes place only where the debt is one and where the parties to the same are identical. Where defendants being indebted to the plaintiffs for goods sold and delivered and where the former gave their acceptance for the same but failed to pay, and the parties thereupon entered into a new agreement by which certain copper was to be transferred by the defendants to the plaintiffs, and the proceeds of the sale to the amount of \$5,743.08 was to be retained by the plaintiff, and the surplus paid to the defendants, and the acceptance delivered up which all was to be in full satisfaction of the debt, except that in case of future ability the defendants were to pay the further sum of \$3,500 which was less than the balance of the original indebtedness, the new contract constituted a discharge and the old contract was merged in the new one¹¹³.

111. *Litchfield v. Garrett*, 10 Mich. 436. course of performance: *Hermer v. Wilson*, 7 Mich. 304.

112. *Rayburn v. Comstock*, 80 Mich. 448; Renunciation in the

113. *Pennsylvania Mining Co. v. Brady* 14 Mich. 260.

Contracts in Michigan

Text

CONTRACTS IN MICHIGAN

PART ONE—Internal Structure

CHAPTER I.

NATURE AND SCOPE OF CONTRACTS.

- §1. Definition.
- §2. What Constitutes Contract.
- §3. Contractual Relations.
- §4. Privity.
- §5. Classification of Contracts.
- §6. The Difference Between Express and Implied Contracts.
- §7. Distinction Between Implied and Quasi-contracts.
- §8. The Essential Elements.
 - (1) Parties.
 - (2) Consideration.
 - (3) The Thing Contracted for or Subject-Matter.
 - (4) Assent.
- §9. All the Elements May be Present, Yet No Contract Exists.

§1. Definition.

Contract may be defined as arising from circumstances under which parties are consenting bargainers personally or by delegation, and their coming together in contract relation is manifested by some intelligible expression in speech, writing, conduct, act or sign¹.

§2. What Constitutes Contract.

In general to constitute contract the parties must occupy towards each other a contract relation and there must be that

1. Woods v. Ayres, 39 Mich. 345. If the conditions specified in the definition do not manifest themselves, no contract exists. Turner v. McCarthy, 22 Mich. 265; Pipp v. Reynolds, 20 Mich. 88; Van Valkenburg v. Rogers, 18 Mich. 180; Keller

v. Holderman, 11 Mich. 248.

An executory contract is an agreement of two or more persons, upon sufficient consideration, to do, or not to do, a particular thing. Kent's Com., p. 605 (10 ed.).

connection, mutuality of will and interaction of parties, generally expressed though not very clearly by the term "privity"².

§3. Contractual Relations.

Contractual relations are not established where a spontaneous service as an act of kindness without any request be performed or where the circumstances account for the transaction on some ground more probable than that of a promise of payment³. Where there is no contractual relation no contract exists which can be enforced⁴.

§4. Privity.

It is essential that the privity to a contract must proceed from the will of the parties, but where no privity of contract exists there may be a privity by operation of law.

§5. Classification of Contracts.

Contracts are classified into Express, Implied and Quasi⁵.

Express contracts are those in which the terms of the agreement are openly uttered or avowed by word of mouth or by writing at the time of making. The inference naturally follows that express contracts may be divided into Oral and Written.

(a) Oral contracts are those which are formed and stated verbally.

(b) Written contracts are those in which the terms are reduced to writing and in law they form the evidence of the agreement. A parol agreement may modify a written contract which is not within the statute of frauds⁶, for a written bargain is of no higher legal degree than an oral one, and there can be no more force in an agreement in writing not to agree by parol, than in a parol agreement not to agree in writing. Every such

2. Woods v. Ayres, 39 Mich. 345.

3. Woods v. Ayres, 39 Mich. 345; Lange v. Kaiser, 34 Mich. 317; St. Jude's Church v. Van Denberg, 31

Mich. 287.

4. Keller v. Holderman, 11 Mich. 248.

5. Woods v. Ayres, 39 Mich. 345.

6. Seaman v. O'Hara, 29 Mich. 66.

agreement, which is modified or discharged, is ended by the new one which contradicts it⁷.

Implied contracts arise under circumstances that in accordance with the ordinary course of dealing and the common understanding of men a mutual intention to contract may be inferred⁸. Thus, if I employed a person to transact any business for me or if I employed him to work and render services, the implied fact is that I promised and undertook to pay him for his services, so if I take up wares from a merchant the implied fact is that I promised and undertook to pay for them.

Quasi or constructive contracts are fictions of law adapted to enforce legal duties by action of contract⁹. Thus when the goods of A have been wrongfully taken or held by B, and sold, although the act of B in taking them, or in their conversion, may have been tortious, yet as he has sold them, and received a benefit from such conversion A may waive the tort, and bring assumpsit for

7. *Westchester Fire Ins. Co. v. Earle*, 33 Mich. 144.

8. *Woods v. Ayres*, 39 Mich. 345.

9. *Woods v. Ayres*, 39 Mich. 345. Much confusion has arisen as to what contracts are implied in fact and what contracts are implied in law. The Supreme Court has not drawn the distinction closely. The following extract from Justice Danforth's opinion in *Dusenbury v. Speir*, 77 N. Y. 144, gives an accurate statement of the distinction between genuine contracts and quasi contracts.

"We cannot agree with the learned judge in this construction of the statute. On the contrary, we think that the express contract referred to in the statute is one which has been entered into by the parties, and upon which, if broken, an action will lie for damages, or is implied, when the intention of the parties, if not expressed in words, may be gathered from their acts and from surrounding circumstances; and in either case must be the result of the free and *bona fide* exercise of the will, pro-

ducing the *aggregatio meritum*, the joining together of two minds, essential to a contract at common law. There is a class of cases where the law prescribes the rights and liabilities of persons who have not in reality entered into any contract at all with one another, but between whom circumstances have arisen which make it just that one should have a right, and the other should be subjected to a liability, similar to the rights and liabilities in certain cases of express contract. Thus, if one man has obtained money from another through the medium of oppression, imposition, extortion, or deposit, or deceit, or by the commission of a trespass, such money may be recovered back, for the law implies a promise from the wrongdoer to restore it to the rightful owner, although it is obvious that it is the very opposite of his intention. Implied or constructive contracts of this nature are similar to the constructive trusts of courts of equity, and in fact are not contracts at all."

the price for which they were sold. Quasi contracts arise, first, upon a record; second, upon a statutory¹⁰, official or customary duty; third, upon the theory of unjust enrichment at the expense of another¹¹.

§6. The Difference Between Express and Implied Contracts.

The difference between the two forms, express and implied contracts, consists in the mode of substantiation and not in the nature of the thing itself, for neither form can come into existence unless the parties sustain contractual relation¹².

§7. Distinction Between Implied and Quasi-contracts.

The one is implied in fact and the other is implied in law. An implied contract rests upon an implied promise to compensate for, or to do something. A quasi contract is founded upon an enforceable duty by an action on contract. It is mere fiction for the purpose of supplying a remedy, while the other is an inference of fact. Intention and mutuality are not heeded in the one, while in the other they are established and enforced¹³.

§8. The Essential Elements.

The elements of a valid contract are:

First, a person able to contract and one able to be contracted with.

Second, a good and sufficient consideration, a *quid pro quo*.

Third, a thing to be contracted for.

Fourth, assent of both parties to the contract.

(1) Parties.

A contract cannot exist without competent parties to make it, and this is true both of the contractor and contractee¹⁴. The general rule is that all persons have capacity to contract excepting those who are incapable for want of capacity, i. e.,

10. Woods v. Ayres, 39 Mich. 345.

11. Watson v. Stever, 25 Mich. 345.

12. Woods v. Ayres, 39 Mich. 345.

13. Woods v. Ayres, 39 Mich. 345.

14. Toledo & S. H. Ry. Co. v. Lamphear, 54 Mich. 574.

such as are infants and persons who are *non compos mentis*. There are many degrees of competency, but business transactions are not to be measured by degrees. The sole question always is, had the party sufficient intelligence to understand the transaction¹⁵. Furthermore the law will not lend encouragement to dishonest persons to cultivate the depraved habits and appetites of others for greater facility to contract with them for the purpose of overreaching them¹⁶.

(2) *Consideration.*

Consideration is essential to the validity of a contract¹⁷. At common law a mere voluntary act of courtesy would not support an assumpsit, unless such courtesy was supported by a previous request. Something must be given for something. It must be something that is mutual or that acts as the inducement and the assumption is that it must be something that is lawful as well as of value in law.

(3) *The Thing Contracted for or Subject-Matter.*

The thing contracted for must have a potential existence¹⁸, it must be legal and not immoral¹⁹, it must not contravene the provisions or policy of the public law²⁰ and it must not be vague and uncertain²¹.

(4) *Assent.*

Assent must manifest itself in the formation of every contract. It is necessary to every contractual relation and it must manifest itself in some conduct, act or sign in order to make the relationship valid and binding²².

§9. All the Elements May be Present, Yet No Contract Exists.

Although all the elements may have been gone through with or complied with, if not seriously, but in jest, there is no contract

15. *Davis v. Phillips*, 85 Mich. 198.

16. *Storrs v. Scougale*, 48 Mich. 387.

17. *Underwood v. Waldron*, 12 Mich. 73.

18. *Gibson v. Pelkie*, 37 Mich. 380.

19. *Case v. Smith*, 107 Mich. 416, 31 L. R. A. 282, 61 Am St. Rep. 341.

20. *Smith v Barstow*, 2 Dougl 155.

21. *Fowler v. Hoffman*, 31 Mich. 215.

22. *Woods v. Ayres*, 39 Mich. 345.

which can be enforced at law. It is essential that a mutual or common purpose must manifest itself in that the thing contemplated is to be done²³.

23. *Keller v. Holderman*, 11 Mich. 248.

CHAPTER II.

FORMAL CONTRACTS.

- §10. Development of the Law.
- §11. The nature of Formal Contracts.
- §12. Classification of Formal Contracts.
 - (a) Signing.
 - (b) Sealing.
 - (c) Delivery.
 - Delivery in Escrow.
 - Deposited for Delivery on Death.
 - Presumptions.
 - Acceptance.
 - Affixing Stamps.

§10. Development of the law.

In the early development of the law, courts only recognized two classes of contracts, Formal and Real. At first the formal contract alone was recognized, when gradually the real contract began to assert itself. The process of development was through the action of *assumpsit* and the manner of proof was one of the distinguishing features. To substantiate a formal contract all the proof required was the writing, later it became the party's seal; while real contracts were proved by showing a *quid pro quo*. The fact that a seal was required as an essential element of contract did not give any greater force to a written contract than to a verbal one¹, for the reason that both were enforced by the same action, the action of *assumpsit*, which, in the early history of its existence, was undergoing a continual change. In its early application this action sounded in tort, but in its gradual development the form of the promise for which it would lie lost its significance², and the doctrine of consideration became its

1. Barton v. Gray, 57 Mich. 622.
 2. Technically *assumpsit* was an action on the case. This was manifest from the clause contained in

the writ and declaration—*super se assumpsit et adtunc et ibidem fideliter promisit*. This allegation is now no more necessary.

essential feature. The maxim, *Ex nudo facto non oritur actio* came now in force, and all promises in law of whatever form, whether in writing, by word of mouth, or conduct, became enforceable under an action of assumpsit. It may be said that through this action a relational ground between contract and tort was supplied.

§11. The Nature of Formal Contracts.

Formal contracts are those which owe their existence to the rules of evidence. Under the law acts are variously classified as to the manner of proving them. In order of importance, they are as follows:

First, by judicial record.

Second, by deed.

Third, by oral testimony.

The modern way in law of looking upon the nature of formal contracts is to regard them as obligations which do not derive their validity from consideration, nor from the agreement between the parties, as in some cases of contracts of record. Their validity, however, lies in the formal nature of the transaction. Thus, a judicial record is a precise history of a suit and all the steps taken in the suit from its commencement to its termination, including all the facts and the conclusion of law thereon, drawn up by the proper officer, for the purpose of perpetuating the exact state of them. It is taken as absolutely authentic, true and binding between the parties themselves and those who are privy to the record³.

§12. Classification of Formal Contracts.

Formal contracts are divided into contracts of record and specialties. Contracts of record are divided into judgments and recognizances.

(a) A judgment is the final consideration and determination

3. *Going v. Society*, 117 Mich. 230; *Kent County Agricultural Society v. Houseman*, 81 Mich. 609.

of a court of competent jurisdiction upon the matter submitted to it, and it is only evidenced by a record or that which is by law substituted in its stead⁴. However, a judgment does not exist until rendered in due form and entered on the record⁵. It is apparent that a judgment is not founded on agreement, nor that it has any direct relation with agreement.

First, a record is conclusive as between the parties thereto and the matters litigated⁶.

Second, the validity of a judgment cannot be attacked collaterally⁷; i.e., under the proviso that the court has jurisdiction both of the subject-matter and the person or persons against whom the judgment is rendered. Judgments by confession arise out of contractual relations, but the power must be in a separate instrument from that containing the promise or obligation, although it may be a part of the contract that such power should be given⁸.

Judgments and recognizances are classified as quasi-contracts in so far as they are enforceable under the action of contracts⁹.

(b) A recognizance is a common law obligation, and the sureties may be bound separately from their principals¹⁰. The fact that a recognizance is in the nature of a judgment confirmed of record, bars it from being executed by an attorney¹¹. In order to make a good recognizance or obligation of record, the form prescribed must be pursued, therefore they may not be acknowledged before any other besides the persons appointed by the statutes, and the substantial forms of the statutes are to be observed¹². In modern law recognizances are more often used in criminal and bastardy cases.

4. *Whitewell v. Emory*, 3 Mich. 84.

5. *Green v. Probate Judge*, 40 Mich. 244.

6. *Going v. Society*, 117 Mich. 230; *Seymour v. Wallace*, 121 Mich. 402.

7. *Benjamin v. Early*, 123 Mich. 93.

8. *Trombley v. Parsons*, 10 Mich. 272.

9. *Wood v. Ayres*, 39 Mich. 345.

10. *People v. Dennis*, 4 Mich. 609, 69 Am. Dec. 338.

11. *In re Fowler*, 49 Mich. 234.

12. *Clink v. Muskegon Circuit Judge*, 58 Mich. 242.

Specialties may be defined as including all instruments under seal, such as bonds¹³ and deeds. The true formal contract is the contract under seal usually called a deed¹⁴. All that was necessary to prove a party bound by all the statements, recitals, conditions and covenants contained in his deed was the proof of the deed itself. The reason for this rule has its source in the parol evidence rule which makes parol evidence inadmissible to contradict or vary the terms of a written agreement. In modern law the doctrine under the rule has become somewhat expanded, through the exception, that parol evidence is admissible to prove the consideration, in that not only the greater or less consideration may be shown than contained in the deed, but that one of a different quality and character may be shown¹⁵.

A deed requires to be signed, sealed and delivered.

(a) *Signing.*

A signature or a mark attached to a signature in some form or manner must be appended to the deed or writing. The mark attached to a signature is evidence of the intention to adopt it, but this may as well be shown by any other clearly expressed act as by the mark¹⁶. The act of a person appending the signature of another to a deed or writing with the latter's assent is the signature in substance and effect of that person whose signature is being appended¹⁷. Where a party verbally directs his name to be attached to a contract, and it is done under his personal supervision, he is bound as if it was his own signature and

13. A bond is a deed whereby the obligor obliges himself, his heirs, executors, and administrators to pay a certain sum to another or to do some other act at a day appointed. 2 Bl. Com. 340, 456.

14. A deed is defined to be a writing containing a contract sealed and delivered by the party thereto. 3 Washburne Real Property (4 ed.) 239.

15. *Dodder v. Snyder*, 110 Mich. 69. In this case the court said, "The recital of a consideration in a deed

is not conclusive, and it may be shown to be greater or less than the amount stated" by including the contract to build a fence as part of the consideration. So parol evidence was admissible to show as part consideration for the deed, the privilege of sowing and raising for his own use a crop of grain upon the land conveyed. *Breitenwischer v. Clough*, 111 Mich. 6, 66 Am. St. Rep. 372.

16. *Just v. Wise*, 42 Mich. 573.

17. *Johnson v. Van Velsor*, 43 Mich. 208.

act¹⁸. A deed executed in the name of William Hommel was sustained as the deed of Wenderlin Hommel on evidence showing that the grantor was known by the former name and answered to it¹⁹.

(b) *Sealing.*

In modern law a seal affixed to a signature attached to a written document has lost its significance and importance in that the common law rule which gave special import and reverence to the affixing of a seal, so that the proving of a consideration could be dispensed with, was modified by statutes²⁰. These statutes enacted that a seal or wafer was unnecessary, but that a scroll or other device was sufficient²¹, that no instrument should be held invalid for want of a seal²², and that under the statute

18. *Just v. Wise*, 42 Mich. 573.

19. *Hommel v. Devinney*, 39 Mich. 522. See also *Clow v. Plummer*, 85 Mich. 550, as to variance of name in body of deed.

20. C. L. '97, §9005. A scroll or device used as a seal upon any deed of conveyance or other instrument, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to such official seals as are, or may be provided for by law. For earlier laws see note under this section in C. L. '97.

C. L. '97, §10417. In all cases arising upon contracts under seal, or upon judgments, when an action of covenant or of debt may be maintained, an action of assumpsit may be brought and maintained, in the same manner, in all respects, as upon contracts without seal; and no bond, deed of conveyance or other contract in writing, signed by any party, his agent or attorney, shall be deemed invalid for want of a seal or scroll affixed thereto by such party.

C. L. '97, §10185. In any action upon a sealed instrument, and where a set-off is founded on any sealed instrument, the seal thereof shall only be presumptive evidence of a

sufficient consideration, which may be rebutted in the same manner, and to the same extent, as if such instrument were not sealed.

C. L. '97, §9018. That in addition to the mode in which such instruments may now be executed in this state hereafter all deeds and other instruments in writing executed by any person or by any private corporation, not having a corporate seal, and now required to be under seal shall be deemed in all respects to be sealed instruments, and shall be received in evidence as such, provided the word "seal" or the letters "L. S." are added in the place where the seal should be affixed.

21. *Ismon v. Loder*, 135 Mich. 345. In this case the court decided that the character "(Seal)," set opposite the official signature of the president and secretary of an agricultural society to a mortgage purporting to be that of the society, and reciting that its seal was affixed—the corporation in fact having no formal seal, nor being required to have one—should, in view of 3 C. L. §9005, be given the effect of a corporate seal.

22. *Ismon v. Loder*, 135 Mich. 345; *Blayborne v. Hunger*, 101 Mich. 375. The absence of a seal or scroll does not invalidate. *Mee v. Benedict*, 98 Mich. 270; *Stewart v.*

it became mere *prima facie* evidence of consideration²³. Thus, the affixing of a seal, except to documents required by law to be under seal²⁴, is of no practical importance. It is apparent that although a seal is of no practical importance and a deed is not void for want of a seal, yet the absence of a seal may be significant in determining whether or not an instrument was intended as a conveyance or not²⁵. Thus, the common law rule as to the distinction between sealed and unsealed instruments has been practically abolished²⁶.

(c) *Delivery*.

Delivery is one of the essential requisites to the validity of a deed²⁷, and title does not vest until its delivery²⁸. A deed although in every respect properly executed does not pass the title of the property so long as the maker has the deed under his control, for he still retains the right to deliver it absolutely, conditionally, or not at all²⁹, but if he manifests and declares his intention that the writing should become operative, although he still retains the custody of it, the delivery becomes valid and the title of the property passes³⁰. Parties to a deed are presumed

Sprague, 71 Mich. 58. This case decides that leases under seal fall within the meaning of the word "contract" under the statute. *Jerome v. Ortman*, 66 Mich. 670; *Barton v. Gray*, 57 Mich. 634; *Lockwood v. Bassett*, 49 Mich. 549; *Fowler v. Hyland*, 48 Mich. 181; *McKinney v. Miller*, 19 Mich. 151.

23. C. L. '97, §10185, as respects their consideration, places simple executory, and sealed executory, contracts upon the same footing. *Township of Danby v. Beebe*, 147 Mich. 312. In an action on an instrument under seal, want of consideration cannot be interposed as a defense unless notice thereof is given with the plea. *Hollenbeck v. Breakey*, 127 Mich. 555; *Boyer v. Sowles*, 109 Mich. 485. *Blayborne v. Hunger*, 101 Mich. 375. The rule established by C. L. '97, §10185 that sealed instruments may be impeached

for want of consideration applies with equal force to all sealed instruments between the parties. *Hobbs v. Electric Light Co.*, 75 Mich. 553. *Green v. Langdon*, 28 Mich. 222.

24. A seal is of no practical importance except where the law requires it. *Barton v. Gray*, 57 Mich. 622.

25. *Spicer v. Bonker*, 45 Mich. 630.

26. *Barton v. Gray*, 57 Mich. 622; *Lockwood v. Bassett*, 49 Mich. 549; *Fowler v. Hyland*, 48 Mich. 179; *McKinney v. Miller*, 39 Mich. 142.

27. *Thatcher v. St. Andrews' Church*, 37 Mich. 263.

28. *Heffron v. Flannigan*, 37 Mich. 274.

29. *Pennington v. Pennington*, 75 Mich. 600; *Reason v. Jones*, 110 Mich. 672.

30. *Dunham v. Pitkin*, 53 Mich. 504.

to understand that in order to make a deed operative delivery is essential³¹. A valid delivery cannot be made after the death of the grantor, it is essential that the delivery is made during his lifetime³². Thus, to constitute the act of delivery it is necessary that the maker deliver the deed during his lifetime and that he indicates, either by acts or by words or both, his intention on his part to perfect the transfer by a surrender of the deed to the grantee or to some third person for his use and benefit, but delivery does not absolutely require a surrender of the possession of the deed to the grantee and an acceptance by him³³. The intention upon the part of the grantor to give effect and make operative the deed is the main object of delivery³⁴. The rule may be set up in cases of co-grantors and co-grantees that where a deed is executed by one of the grantors, and delivered to the grantee, without any qualification, or any intention to withdraw it, it is operative as to such grantor, notwithstanding a failure

31. *Eaton v. Trowbridge*, 38 Mich. 454.

32. *Taft v. Taft*, 59 Mich. 185.

33. *Thatcher v. St. Andrews' Church*, 37 Mich. 264. As to sufficiency of delivery: See *Blackford v. Olmstead*, 140 Mich. 582; *Dikeman v. Arnold*, 78 Mich. 455; *Stevens v. Castel*, 63 Mich. 111; *Gage v. Gage*, 36 Mich. 229. As to insufficiency of delivery: See *Roup v. Roup*, 136 Mich. 385; *Gardiner v. Gardiner*, 134 Mich. 90; *Bisard v. Sparks*, 133 Mich. 587; *Major v. Todd*, 84 Mich. 85; *Lyons v. Lyons*, 76 Mich. 610. A husband and his wife bought realty in her name, and took a deed therefor when \$1900 had been paid on the price. \$400 was furnished by her, and the balance was paid out of profits of the husband's business, in which he was assisted by his wife and daughter. On the wife's death, these two children deeded the property to the husband. Shortly before his remarriage, he conveyed to the daughter, and explained to his second wife

that it was done to secure to the daughter a \$500 interest in the property, and that she would reconvey when requested. Although talked of, a reconveyance was not made until six years afterwards. The deed was delivered at that time, but was handed back to the daughter for safe-keeping; she claiming it was made to facilitate a sale by her father. The court decided that the realty belonged to the father, subject to a \$500 interest in the daughter. *Hall v. Dobbin*, 119 Mich. 106. Where a grantee accepts a deed without its being executed by the wife of the grantor, upon the agreement to afterwards execute it, which she does, he cannot be heard to say that the deed was never delivered to or accepted by him because of his refusal to again receive it after such execution by the wife, whose only interest in the land is an inchoate right of dower. *Dikeman v. Arnold*, 78 Mich. 455.

34. *Burk v. Sproat*, 96 Mich. 404; *Dikeman v. Arnold*, 78 Mich. 455.

of delivery as to another grantor³⁵. The general principle is well established that a delivery of a deed to a third person for the benefit of the grantee, in the absence of anything conveying a different intent, is as much a delivery as if made to the grantee himself³⁶, but where the deed is placed with the common agent of the parties for safekeeping until the consummation of their contract the delivery is not effective nor operative³⁷. The recording of a deed with intent to pass title is a sufficient delivery³⁸.

Delivery in Escrow.

It is a well settled rule, that if the grantor does not intend that his deed shall take effect until some condition is performed, or the happening of some future event, he should either keep it himself, or leave it with some other person as an escrow to be delivered at the proper time³⁹.

A delivery in escrow is a conditional delivery of a deed whereby it is not to take effect until some condition is fulfilled⁴⁰. The general rule is that a deed cannot be delivered in escrow to the grantee⁴¹. In order that the delivery should operate as an escrow it is essential that it should be made to a stranger, and not to the party⁴².

35. Thomson v. Flint & P. M. R. Co., 131 Mich. 95.

36. Hosley v. Holmes, 27 Mich. 416.

37. Connor v. Buhl, 115 Mich. 531. As to delivery being complete: See Fischer v. Union Trust Co., 138 Mich. 612; Taft v. Taft, 59 Mich. 185, 60 Am. Rep. 291. A deed left unconditionally with a third person for the use of a grantee who is not under guardianship, and received by the grantee under circumstances indicating acceptance, is sufficiently delivered, and conveys title even although the grantee be of unsound mind. Campbell v. Kuhn, 45 Mich. 513, 40 Am. Rep. 479. As to delivery being incomplete: See Wisconsin & M. R. Co. v. McKenna, 139 Mich. 43; Burk v. Sproat, 96 Mich. 404; Watson v. Helliman, 57 Mich. 607.

38. Holmes v. McDonald, 110 Mich. 563, 75 Am. St. Rep. 430. Recording a sufficient delivery: See Fenton v. Miller, 94 Mich. 204; Glaze v. Farmers' Mut. Fire Ins. Co., 87 Mich. 349; Compton v. White, 86 Mich. 33.

Recording not a sufficient delivery: See Hogadone v. Grange Mut. Fire Ins. Co., 133 Mich. 330; Stevens v. Castel, 63 Mich. 111.

39. Dawson v. Hall, 2 Mich. 390.

40. Dawson v. Hall, 2 Mich. 390; Chick v. Sisson, 95 Mich. 412.

41. Dawson v. Hall, 2 Mich. 390; Gage v. Gage, 36 Mich. 229.

42. Dawson v. Hall, 2 Mich. 390; Evidence that a deed executed by a wife to her husband was in the custody of the grantee during his lifetime, and that, by the grantor's consent, he claimed to be, and handled the property as, the owner, is

It is said that "while a deed left in escrow is frequently held to relate back for the purpose of avoiding the difficulty of incapacity of the grantor, or his death occurring before the deed is handed over by the depository, yet, except for that formal purpose, there is no universal relation. Intermediate rights are valid against the second delivery. The doctrine is clear that the second delivery is necessary to carry title, and that the performance of the condition must be absolute and accurate, and cannot be dispensed with on any otherwise substantial performance"⁴³. The doctrine of escrow does not apply where the deeds have been delivered irrevocably on the simple condition of transfer to the party upon the death of another⁴⁴. Thus, the next form of delivery will be where a deed is deposited for delivery on death of a grantor.

Deposited for Delivery on Death.

The rule is well settled that the delivery of a deed by a grantor to a third person, to be delivered by him upon the grantor's death, is a valid and complete delivery⁴⁵.

Presumptions.

A presumption of delivery arises from the deed having been signed, acknowledged, and placed upon record, especially if it has been acted upon by both parties⁴⁶. If nothing to the contrary appears the time of the deed's acknowledgment will be presumed to be the time of delivery⁴⁷, but where a grantee died between the dates of the deed and its acknowledgment, it was

sufficient to establish a valid delivery, notwithstanding it further appears that it was agreed that the deed should not be recorded unless the wife should die first, and that, if the husband should die first, the deed should be destroyed and the title to revert to the grantor. *Tabor v. Tabor*, 136 Mich. 255; *Dyer v. Skadan*, 128 Mich. 348.

43. *Taft v. Taft*, 59 Mich. 185.

44. *Taft v. Taft*, 59 Mich. 185.

45. *Jenkinson v. Brooks*, 119 Mich. 108; *Howard v. Patrick*, 38 Mich. 795; *Latham v. Udell*, 38

Mich. 238. See also: *Leonard v. Leonard*, 145 Mich. 503; *Cole v. Cole*, 144 Mich. 676; *Connor v. Rivard*, 144 Mich. 177; *Meech v. Wilder*, 130 Mich. 29; *Pennington v. Pennington*, 75 Mich. 600; *Howard v. Patrick*, 38 Mich. 795; *Wallace v. Harris*, 32 Mich. 380.

46. *Patrick v. Howard*, 47 Mich. 40; *Jackson v. Cleveland*, 15 Mich. 94.

47. *Eaton v. Trowbridge*, 38 Mich. 454; *Johnson v. Moore*, 28 Mich. 3; *Blanchard v. Tyler*, 12 Mich. 339.

presumed that the deed had been delivered in his lifetime⁴⁸.

Acceptance.

Acceptance of a deed by the grantor or obligee is essential to its validity. As we have seen a deed may be delivered when assented to by the grantee, after the death of the grantor⁴⁹; so an unconditional delivery to a third person for the use of the grantee, although he knows nothing of the fact, will give effect to the deed, provided he subsequently assents⁵⁰. An acceptance, at a time subsequent to that of delivery, would not be sufficient to give validity to the deed, but where the act of delivery is in its nature a continuing one, as leaving the deed on deposit, to be afterwards accepted by the grantee, a subsequent acceptance would be sufficient⁵¹. A conclusive acceptance of a deed by a grantee is his joining in the deed and placing it on record after its execution is complete⁵². In conclusion it may be said that many of these questions are involved in the delivery of the simple contract.

Affixing Stamps.

The omission to affix a stamp to a deed, if promptly supplied upon discovery, does not invalidate a deed when nothing appears to indicate a fraudulent intent in omitting the stamp⁵³.

48. *Eaton v. Trowbridge*, 38 Mich. 454.

49. *Thatcher v. St. Andrews' Church*, 37 Mich. 263.

50. *Home Ins. Co. v. Curtis*, 32 Mich. 397; *Ellis v. Secor*, 31 Mich. 187.

51. *Thatcher v. St. Andrews' Church*, 37 Mich. 263.

52. *Wolf v. O'Connor*, 83 Mich. 301; *Dikeman v. Arnold*, 78 Mich. 455.

53. *Taft v. Simpson*, 125 Mich. 206.

CHAPTER III.

SIMPLE AND SIMPLE WRITTEN CONTRACTS.

- §13. Definition.
- §14. Acceptance of Benefits from Work, Labor or Goods.
- §15. Acceptance of Tickets, Bills of Lading, Receipts, Etc.
- §16. Auction Sales.
- §17. Business Circulars and Proposals.
- §18. Time Tables.
- §19. Simple Written Contracts.
 - (1) Written Contract that need not be in writing.
 - (a) Contracts that need not be in writing, nor proved by writing, but, nevertheless, are in writing.
 - (b) Contracts that need not be in writing, but must be proved by writing.
 - (2) Written Contracts that must be in writing.
 - By Act of Congress.
 - (a) Assignments of Copyrights.
 - (b) Assignments of Patents for Inventions.
 - By Statute.
 - (A) Acceptance of a Bill of Exchange or other order for the payment of money.
 - (B) Acknowledgment of a debt barred by the Statute of Limitations.
 - (C) All Conveyances or Contracts Relating to Real Estate.
 - (D) All Bills of Exchange and Promissory Notes.
 - (E) Under the Statute of Frauds certain specified contracts must be in writing.
 - (3) The Memorandum.
 - (a) When must a memorandum be made?
 - (b) What must be the form of the memorandum?
 - (c) What constitutes a memorandum?
 - (d) What must be the contents of the memorandum?
 - (e) What must be the form of signature?
 - (f) What constitutes delivery?
- §20. The Substantive Rule of Parol Evidence.
 - (a) Evidence of the contract's existence.
 - (b) Evidence of a contract itself.
 - (c) Evidence of its terms.
 - (1) Exceptions.
 - (a) Those matters which are presumed.
 - (b) Those matters which the parties had in mind and agreed upon, but did not give expression to in the written contract.
 - (c) Those matters which by force of law are a part of the contract.
 - (2) Limitations.
 - (a) Matters of identification.
 - (b) Matters explanatory.

§21. Construction of Written Contracts.

- (a) Written contracts in general.
- (b) Language employed in the contract.
- (c) Written and printed parts of a contract.
- (d) Clauses which are in conflict.
- (e) Written instruments must be construed together.
- (f) Time as of the essence of contract.
- (g) Reasonable time implied.
- (h) Penalties and liquidated damages.

§22. Conditions in Written Contracts.**§13. Definition.**

A simple contract is a product of modern law. It arises from the contractual relations entered into between at least two competent parties and the meeting of their minds in one and the same intention whereby an act for a promise, or a promise for an act, or a promise for a promise is given. In other words, there must be a promise on the one hand and a consideration on the other. In general, promises may be variously made. Promises made by words are called express contracts and promises made by acts or conduct are called implied contracts.

§14. Acceptance of Benefits From Work, Labor or Goods.

A benefit which accrues to a party whether for services rendered, money expended, or property used, or from any other cause, upon which a duty to make compensation arises, will, upon acceptance, although in the absence of an express promise to make such compensation, create an implied contract. Thus, it is apparent that if A performs services on a farm owned in part by C, and in part by D, and such services inure to their benefit, and A expects compensation from them, upon their acceptance of the services they are liable for the same and this is true in the event that no previous request has been made, provided the services were accepted voluntarily¹. If A employs B to manufacture articles at an agreed price out of material to be furnished by A, the fact that B himself without request, assists in the manufacture, will not raise an implied promise on the part of the other party to pay for such services²; so, on the other

1. Snyder v. Neal, 129 Mich. 692.

2. Lange v. Kaiser, 34 Mich. 318.

hand where a woman entered into an agreement with a farmer to take charge of his farm house, and "Do the work for and take care of" the hired men, some of whom were employed continuously from year to year, an implied promise arose to pay a reasonable compensation for washing and mending done for the hirelings³.

Again, when A furnishes goods to B with the expectation of being paid therefor, and B has good reason to know that A was acting with that expectation, the acceptance of the goods raises an implied promise that B will pay the reasonable value of such goods, but an inquiry by one party as to how much another's firm were paying for certain goods, and the answer that they would take all he could make at a certain price would not constitute an implied contract without a further agreement to accept or act on their order, or deliver a stated quantity⁴.

The general rule that the presumption of acceptance of a benefit implies a promise to pay is not applicable when applied to family relations. Thus, where a mother, after the death of her husband, boarded with her daughter, no implied promise would arise on the part of the mother to pay for the board furnished her by the daughter⁵.

§15. Acceptance of Tickets, Bills of Lading, Receipts, Etc.

A common carrier whose duties are to receive and carry passengers and goods and transport them to their destination may limit or modify by contract the duties imposed by law, so as to limit his liability. These limitations or modifications must be reasonable and in accordance with law and sound public policy, and are usually made by stipulations printed or written on the ticket, bill of lading or receipt, handed to the passenger or shipper. A ticket signed by the passenger binds him to the conditions contained therein⁶. In other words, he accepts it with the

3. *Fowler v. Fowler*, 111 Mich. 676.

4. *Ahearn v. Ayres*, 38 Mich. 692.

5. *Howe v. North*, 69 Mich. 272.

6. *Edwards v. Lake Shore & M. S. Ry.*, 81 Mich. 364. Where in an action by a passenger for being ejected from a train, it appears that

conditions imposed whether he reads them or not. Failure to comply with the reasonable conditions of a ticket to be stamped and re-signed upon the passenger's return trip, bars the passenger from recovering for his ejection from the train, for the general rule is, that there is no liability, either in tort or upon contract, where the passenger has failed to comply with the conditions precedent of the ticket⁷. Where an agent sells a ticket for transportation beyond his company's line and represents that the ticket included a berth on a connecting boat, and the words on the ticket "berth and meals extra" were stricken out in red ink, the passenger was chargeable with notice of the conditions printed on the ticket, to the effect that the company acted merely as sales agent, and was not responsible beyond its own line, and that no liability should arise by reason of any statement made by any employe of the company not in accordance with the contract⁸.

Common carriers by universal custom may limit and modify their common law liability by printed or written stipulation on their bills of lading in a manner recognizable by law as reasonable and not inconsistent with sound public policy⁹. The rights and liabilities of the parties are fixed by the bill of lading and when its terms have been agreed upon, the acceptance by the shipper without objection, is an implied assent to its terms¹⁰.

§16. Auction Sales.

It is customary to announce an auction sale of property by circular, poster or newspaper advertisements, in which is stated the time and place of sale as well as a description of the prop-

he presented a ticket which, on its face, entitled him to ride, defendant cannot show that it was the custom to issue such tickets for certain days only, and that published notice had been given accordingly, in the absence of any proof of knowledge of such limitation by the passenger to the purchaser of the ticket. *Carvey v. Detroit & Mackinac Railway*

Co., 133 Mich. 659.

7. *Edwards v. Lake Shore & M. S. Ry.*, 81 Mich. 364.

8. *McWethy v. Detroit, Grand Rapids & Western R. R. Co.*, 127 Mich. 333.

9. *Smith v. American Express Co.*, 108 Mich. 572.

10. *McMillan v. Michigan Southern R. R. Co.*, 16 Mich. 79, 93 Am. Dec. 208.

erty, but this announcement does not bind the owner to sell at auction. On the other hand, if the auctioneer at the appointed time and place offers the property for sale without reserve to the highest bidder, and finally knocks it down to him by accepting the bid, the owner is bound¹¹. It is apparent then that auctioneers, engaged to sell real estate upon specific terms fixed by the owner, have no right after a sale at auction pursuant to such terms, to make a contract with a different person than the purchaser, and upon different terms, for a sale of the property, nor will such a contract be ratified by the owner by his tendering a deed upon the basis of a performance of the terms of sale as authorized by him, and the owner becomes liable for a payment made to said auctioneers on said contract, which he had refused to accept¹². But where a warranty of property, made by the owner prior to an auction sale, not included in the posted notices containing the terms of such sale, had the only effect to cause the purchaser to pay more than the property was worth, it was decided not to be void or unenforceable as against public policy¹³.

§17. Business Circulars and Proposals.

The ordinary forms in which bids are made for business for the purpose of opening negotiations are by advertisements, circulars and trade letters which are made with the intention of leading up to an offer and acceptance, but it is not usual that the offers made in this way are contractual in form. They merely invite to negotiations¹⁴. An inquiry concerning the price of goods does not imply a promise to take them¹⁵, nor does the statement of the price at which property may be bought¹⁶.

11. *Noah v. Pierce*, 85 Mich. 70.

12. *Muffatt v. Gott*, 74 Mich. 672. Under the statute of frauds the auctioneer must have written authority to sell land. (s. c.)

13. *Bronson v. Leach*, 74 Mich. 713.

14. *Ahearn v. Ayres*, 38 Mich.

692; *McDonald v. Bewick*, 51 Mich. 79; *Peek v. Novelty Works*, 29 Mich. 313.

15. *Ahearn v. Ayres*, 38 Mich. 692.

16. *McDonald v. Bewick*, 51 Mich. 79; *Wardell v. Williams*, 62 Mich. 50.

§18. Time Tables.

Time-tables, published by railroad companies, have been deemed in some jurisdictions¹⁷ to imply a promise, on the part of the company, for the exercise of due care and skill in the transportation of its passengers according to the printed schedule. It is well established that a railroad company owes a duty to the public to run its train with regularity and dispatch for the carriage and transportation of passengers and freight, and to keep its tracks in safe and suitable condition for the purpose of safe transit¹⁸. In its *obiter dicta* the court said: "Time-tables furnish one means of information, but they are not always accessible or intelligible to all classes of passengers, and the experience of all travelers is that they are sometimes not changed as soon as train changes are made, and are not always strictly adhered to¹⁹." It is determined that a carrier's shipping agent has the general authority to contract with a shipper to deliver his goods at the place of destination by a stated time, allowing the usual time for the trip²⁰. A guaranty to a theatrical troupe that it would arrive at a given time is valid²¹.

§19. Simple Written Contracts.

All contracts create rights and duties between the parties and any breach that may arise under the contract may result in liability. The distinguishing feature between contracts is the mode of proof required to establish them. Contracts under seal are proved by evidence of sealing and delivery, and in cases of attestation, by the testimony of subscribing witnesses²². The simple contract reduced to writing finally settles the rights, duties, and obligations of the respective parties to the contract²³ in that all

17. *Gordon v. Manchester, etc., R. Co.*, 52 N. H. 596.

18. *Henry v. L. S. & M. S. Ry. Co.*, 49 Mich. 495.

19. *L. S. & M. S. Ry. Co. v. Pierce*, 47 Mich. 277.

20. *Rudell v. Ogdensburg Transit Co.*, 117 Mich. 568.

21. *Foster v. Railway Co.*, 56 Fed. 434

22. *Watson v. Peters*, 26 Mich. 509.

23. *Gregory v. Village of Lake Linden*, 130 Mich. 368; *Sheley v. Brooks*, 114 Mich. 11; *Highstone v. Burdette*, 61 Mich. 54; *Skeels v. Starrett*, 57 Mich. 350; *Wonderly v. Holmes Lumber Co.*, 56 Mich. 412; *Kalamazoo Novelty Mfg. Works v. Macalister*, 40 Mich. 84; *Martin v.*

preliminary negotiations are merged in the contract²⁴. A contract reduced to writing must be governed by the rules of evidence. These rules are based upon the mode of proving an agreement. In determining what rule of evidence is necessary to substantiate the contract, the following questions are involved:

(1) What facts are there and can be shown that a contractual relation has been consummated and who are the parties to the contract?

(2) What extrinsic evidence is admissible to show the intention of the parties?

(3) How far is extrinsic evidence admissible?

(4) What clause of the statute of frauds applies from an evidential standpoint?

Parol evidence to prove a simple written contract is admissible to show that the party sued is the party bound²⁵ and the connection between contemporaneous writings may be shown by parol²⁶. Written contracts cannot be varied, modified or altered by parol evidence²⁷; but if the writing does not constitute a complete contract oral evidence is admissible for that purpose²⁸. In equity, however, oral evidence is admissible in all such cases of which equity has exclusive jurisdiction²⁹. For example, in cases where a party asks for a reformation or cancellation of a written contract.

Simple written contracts are divided into two groups, as follows:

(1) Written contracts that need not be in writing.

(2) Written contracts that must be in writing.

The first class may be divided into:

Hamlin, 18 Mich. 354, 100 Am. Dec. 181; Savercool v. Fardell, 17 Mich. 308; Adair v. Adair, 5 Mich. 204, 71 Am. Dec. 779; Sutherland v. Crane, Walk. Ch. 523.

24. Sheley v. Brooks, 114 Mich. 11; all verbal agreements merged in written contract: Grand Rapids Wood Finishing Co. v. Hatt, 152

Mich. 132.

25. Ford v. Savage, 111 Mich. 144.

26. Facey v. Otis, 11 Mich. 213.

27. Adair v. Adair, 5 Mich. 204, 71 Am. Dec. 779.

28. Doty v. Martin, 32 Mich. 462.

29. Sutherland v. Crane, Walk. Ch. 523.

(a) Contracts that need not be in writing, nor proved by writing, but, nevertheless, are in writing.

(b) Contracts that need not be in writing, but must be proved by writing.

Under (a) the contract rests partly in parol and partly in writing, but the writing alone is no proof of the whole contract.

Under (b) the written contract is the proof required. The rule in subdivision (a) is that where a written contract or agreement does not contain the whole contract between the parties, prior and contemporaneous agreements and conversations may be shown in order to prove the contents of the entire contract³⁰. The rule in subdivision (b) is that the written contract or memorandum (and the latter under the statute of frauds must contain the whole contract) is the best evidence and that its effect, when perfect in itself and unambiguous, cannot be changed by parol evidence³¹, but until a written contract or memorandum becomes complete by the signatures of both parties (or by the signature of the party charged) agreeing to the same thing, no one is bound, and the negotiations are open to oral proof³².

It is apparent now that the effect of reducing a contract to writing has its cause in the parol evidence rule, and in that construction is an essential part of contract. All contracts that are not required by law, by statute or by the statute of frauds to be in writing may be made and entered into orally.

When parties enter into a written contract they must have in contemplation many rules of law, ordinances, customs³³, rules and by-laws³⁴, and facts which more or less affect the wording of the contract when not modified or altered in express terms. To set forth in proper provisions and stipulations all the matters that by operation of law may affect the terms of the written contract entered into between the parties is practically impossible.

30. *Stahelin v. Sowle*, 87 Mich. 124.

31. *Jones v. Phelps*, 5 Mich. 218.

32. *Aldine Press v. Estes*, 75 Mich. 100.

33. *Crane v. Hardy*, 1 Mich. 63; *Meloche v. Chicago, etc.*, 116 Mich. 69.

34. *Cohen v. Supreme Sitting of the Order of Iron Hall*, 105 Mich. 282.

These matters which may be a part of the contract and are not expressed may be classified as follows:

First. Those matters which are presumed.

Second. Those matters which are a part of the contract and existed in the minds of the parties when the contract was entered into, but which did not find expression.

Third. Those matters which through the force of law are a part of the contract.

All these points will be more fully discussed under the parol evidence rule, which is really a substantive rule of contracts.

A written contract of the class which the parties reduced to writing solely because they chose to do so may be subsequently modified by oral agreement, for the reason that all written contracts, not under seal, or not by law required to be in writing, or by statute, not required to be in writing, in order to prove the same, parol evidence does not preclude a subsequent oral modification³⁵.

(2) Written contracts that must be in writing. The following contracts must be in writing by Act of Congress³⁶:

(a) Assignments of copyrights.

(b) Assignments of patents for inventions.

The following contracts must be in writing by statutes:

(A) Acceptance of a bill of exchange³⁷ or other orders for the payment of money³⁸;

35. *Mouat v. Bamlet*, 123 Mich. 345; *Moore v. Locomotive Works*, 14 Mich. 266.

36. Rev. St. U. S., §§4898, 4955. For special contracts which are outside of the ordinary, it is always advisable to consult the C. L. & P. A. to ascertain what requirements, if any, are imposed.

37. Act 265, Public Acts 1905, §134. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer, the acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

§135. The holder of a bill presenting the same for acceptance may

require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.

§136. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, in the faith thereof, receives the bill for value.

§137. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon faith thereof, receives the bill for value.

38. *Pfaff v. Cummings*, 67 Mich. 143.

(B) Acknowledgment of a debt barred by the statute of limitations³⁹;

(C) All conveyances or contracts to real estate⁴⁰;

(D) All bills of exchange and promissory notes⁴¹; and

(E) Under the statute of frauds certain specified contracts must be in writing⁴².

39. C. L. '97, §9740. In actions founded upon contract express or implied, no acknowledgment or promise shall be evidence of a continuing contract, whereby to take a case out of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing, signed by the party to be charged thereby.

40. C. L. '97, §9509. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

§9511. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized by writing.

41. Act 265, P. A. 1905, §128. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

§3. An instrument, to be nego-

tiabile, must conform to the following requirements:

First, It must be in writing and signed by the maker or drawer;

Second, It must contain an unconditional promise or order to pay a certain sum in money;

Third, It must be payable on demand or at a fixed or determinable future time.

Fourth, It must be payable to order or to bearer; and

Fifth, Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

42. C. L. '97, §9515. In the following cases specified in this action, every agreement, contract, and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof be in writing, and signed by the party to be charged therewith, or by some person by him thereunto lawfully authorized, that is to say:

(1) Every agreement that, by its terms, is not to be performed in one year from the making thereof;

(2) Every special promise to answer for the debt, default, or misdoings of another person;

(3) Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promise to marry.

(4) Every special promise made by an executor or administrator, to answer damages out of his own estate.

§9516. No contract for the sale of any goods, wares or merchandise, for the price of fifty dollars or more, shall be valid, unless the purchaser shall accept and receive part of the goods sold, or shall give

(A) (D) As stated, negotiable instruments and their acceptance must be in writing and they must possess certain essential elements in order to make them negotiable. The effect of their negotiability must be distinguished from their assignability. The Act relating to Negotiable Instruments⁴³ sets forth these elements completely and fully, but some of these elements as exemplified by decisions are given herewith as follows:

First, the negotiable instrument must be dated⁴⁴.

Second, the parties must be clearly described therein⁴⁵.

Third, it must be for money only⁴⁶ and for a sum certain⁴⁷, but a promissory note secured by mortgage is not rendered non-negotiable by a provision in the latter requiring the mortgagor to pay all taxes and assessments upon the mortgaged premises where the same obligation rested upon him by law at the time the instruments were executed independent of any such stipulations⁴⁸, nor will the payment in installments invalidate the note⁴⁹.

Fourth, it must be based upon consideration, for a promissory note is not binding between maker and payee unless it is based upon consideration⁵⁰, and an instrument promising payment of a specified sum at a certain time, to the payee or bearer, is a promissory note, notwithstanding the consideration upon which it was given is stated in the instrument⁵¹.

Fifth, it must be for a time certain, for an agreement for the payment of a sum certain at a specified date, coupled with a consideration that the sale or removal of the property for a part of

something in earnest, to bind the bargain or in part payment, or unless some note or memorandum in writing of the bargain be made, and signed by the party to be charged thereby or by some person thereunto by him lawfully authorized.

43. See an Act relating to Negotiable Instruments, Act 265 P. A. 1903.

44. *First State Sav. Bank v. Webster*, 121 Mich. 149.

45. *Knight v. Jones*, 21 Mich. 161; *Peltier v. Babillion*, 45 Mich. 384; *Shaw, Kendall & Co. v. Brown*, 128 Mich. 573.

46. *Black v. Ward*, 27 Mich. 191. Payable "in Canada currency."

47. *Walker v. Thompson*, 108 Mich. 686. See *Altman v. Reiter-shoper*, 68 Mich. 287, 13 Am. Rep. 341; *Bullock v. Taylor*, 39 Mich. 137; *Crump v. Berdam*, 97 Mich. 293, 37 Am. St. Rep. 345.

48. *Wilson v. Campbell*, 110 Mich. 580, 35 L. R. A. 544.

49. *Wright v. Irwin*, 33 Mich. 32.

50. *Teed v. Marvin*, 41 Mich. 216.

51. *Beardslee v. Horton*, 3 Mich. 560.

the purchase price of which it was given shall cause the debt to at *once* mature, is not a negotiable promissory note⁵².

Sixth, it must be a contract which is absolute⁵³.

Seventh, it must be signed by the promisor, for it is his signature that constitutes part of the execution of the note⁵⁴; but a maker may authorize another to attach his name to the note⁵⁵, and if by his direction and in his presence another writes his signature, that part of the execution is sufficient⁵⁶; so is a signature added after delivery⁵⁷. A party whose name was signed to a draft without his authority, having received and enjoyed the proceeds with full knowledge of the facts as to the manner in which it was obtained, and of the whole transaction, is liable upon the draft⁵⁸.

Eighth, it must have a revenue stamp affixed whenever the revenue law requires it, and is in force. The validity of a note is not affected for the want of a stamp, nor is the absence of the stamp any notice of its invalidity⁵⁹. The drawer, defending in the interest of the donee, produced an unstamped draft, but before the trial placed the requisite stamp upon same in pursuance of the act of Congress of June 30, 1864, thereby rendering the draft valid from its date⁶⁰. The want of a stamp will not affect the note's force as evidence, nor make void a contract, made in one of the states, between the citizens thereof, which is permitted by the local law⁶¹.

Ninth, it must be delivered, for the delivery of a promissory note by the maker is necessary to a valid inception of the contract⁶², and a note takes effect from delivery only, but not from

52. *First National Bank of Port Huron v. Jane Carson*, 60 Mich. 432.

53. *Chandler v. Carey*, 64 Mich. 237, 8 Am. St. Rep. 814.

54. *Burson v. Huntington*, 21 Mich. 415, 4 Am. Rep. 497.

55. *Coy v. Stiner*, 53 Mich. 42.

56. *Sager v. Tupper*, 42 Mich. 605.

57. *Cook v. Brown*, 62 Mich. 475, 4 Am. St. Rep. 870.

58. *McDonough v. Heyman*, 38 Mich. 334. As to place of signature: See *Allison v. Circuit Judge*, 104 Mich. 141.

59. *Burson v. Huntington*, 21 Mich. 415, 4 Am. Rep. 497.

60. *Gibson v. Hibbard*, 13 Mich. 214.

61. *Sammons v. Holloway*, 21 Mich. 162, 4 Am. Rep. 465.

62. *Burson v. Huntington*, 21 Mich. 415, 4 Am. Rep. 497.

its date or from the date it was signed⁶³. A delivery on condition is valid, for the payee in a note given on the delivery by him of a deed of land to the maker on condition that, if the maker fails to sell the land to third parties, the title of the payee should be defeated and the note be returned to the maker, has a conditional title to the note, subject to be defeated by the non-sale of the land, and is liable in trover for the value of the note in case he disposes of it and the land is not sold⁶⁴.

Tenth, it must be accepted and the acceptance must be in writing⁶⁵. The act of drawing a bill of exchange by a corporation upon itself is deemed an acceptance of it, and a formal acceptance is unnecessary⁶⁶. Under §4873, C. L. '97, which provides that no person within this state shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent, an action cannot be brought on a verbal acceptance⁶⁷. Orders payable upon demand, are not subject to acceptance⁶⁸. The conditional or qualified acceptance of an order is valid when properly made. Where a contractor gave an order on the contractee, who wrote upon the same "Accepted as per above order when A. H. B.'s and W. W.'s lien or garnishee is satisfied", the acceptance is subject to whatever sums the contractee is required to pay in order to extinguish the lien of the parties named therein⁶⁹. The mere writing of the drawee's name across the face of an order is a sufficient acceptance, but adding the words "Paid on this order forty dollars" does not qualify the acceptance or limit it to that sum⁷⁰.

The certification of a check by a bank that it is "good" is similar to the accepting of a bill, and the act of the indorsee

63. *Reman v. Wessels*, 53 Mich. 549.

64. *Brown v. St. Charles*, 66 Mich. 71.

65. *Pfaff v. Cummings*, 67 Mich. 143.

66. *Harvey v. The White Pigeon Beet Sugar Co.*, 1 Dougl. 193.

67. *Upham v. Clute*, 105 Mich. 350.

68. *Sweet v. Swift*, 65 Mich. 90.

69. *Tyler v. Slack*, 103 Mich. 268.

70. *Peterson v. Hubbard*, 28 Mich. 198. See *Jenks v. Wells*, 90 Mich. 515.

of a check in procuring it to be certified by the drawee prevents the bank from revoking its acceptance⁷¹.

Eleventh, it must be valid and the legality of object or of consideration must be manifest. Under C. L. '97, §7219, which makes it a misdemeanor for a life-insurance agent to pay or allow any rebate of premium as an inducement to insurance, a note given for that purpose is void for want of consideration owing to the illegality of the insurance contract⁷². The consideration of a note which consists in part of an agreement to conceal from the public and from the maker's wife the fact that he has been guilty of adultery is void for the subject is illegal in that it is against public policy⁷³. A note given upon a promise to compound a felony is void, whether made at the solicitation of the maker, or by reason of the threats of the payee or his agent; while a note given to settle a just debt, although obtained by threats to prosecute in which none of the elements of duress or fraud were manifested, nor a promise given not to prosecute, is valid⁷⁴. Where there is no agreement to stifle a prosecution for embezzlement, a note given to settle the amount embezzled by the agent is valid⁷⁵. A note taken by a township treasurer in his own name, on the sale of property for taxes, is void in his hands on the ground of public policy⁷⁶. The consideration of a note, given by a discharged bankrupt to a creditor for the balance of his claim not satisfied by composition proceedings, to which the creditor assented upon the agreement that such note should be executed, is fraudulent and void⁷⁷. Again, the consideration of a note, based upon the assurances on the part of officials of a bank that they would sign a petition to the judge for clemency towards a relative of the makers who is

71. First Nat. Bank v. Currie, 147 Mich. 73.

72. Heffron v. Daly, 133 Mich. 613.

73. Case v. Smith, 107 Mich. 416.

74. Wolf v. Troxell's Estate, 94

Mich. 573.

75. Wolf v. Troxell's Estate, 94 Mich. 573.

76. Chapman v. Huntington, 80 Mich. 552.

77. Tinker v. Hurst, 70 Mich. 159.

under arrest for robbing the bank, or that they would exercise influence with the court to secure a lighter sentence, is void for the reason that its object is illegal as being against public policy⁷⁸.

The validity of a negotiable instrument is governed by the same rules as those which apply to all simple contracts. A note is not void where a note is signed by a person who, if intoxicated, was yet aware of what he was doing, and not deceived as to the identity of the paper signed, and if there is any defense to be made it must rest on fraud, and not on want of capacity⁷⁹. In general it must be free from duress, mistake⁸⁰, fraud and misrepresentation⁸¹ as contemplated in law⁸². Duress may be defined as implying a constraint which overcomes the will of the person constrained, and it may be the result of imprisonment, or threats of immediate imprisonment⁸³, and the weight of authority is to the effect that imprisonment of one cannot be treated as duress or constraint of another, except in the case of husband and wife, who are treated as one in law⁸⁴. The effect of partial invalidity on a note, where part of the consideration is given for the discontinuance of a criminal prosecution, is to make the note void⁸⁵.

Twelfth, it must contain words of negotiability. The words, "or bearer" "or order", are such as to give the quality of negotiability to the paper; i. e. the term negotiable is one of

78. *Buck v. First Nat. Bank of Paw Paw*, 27 Mich. 293, 15 Am. Rep. 180. See *O'Hara v. Carpenter*, 23

Mich. 410, 9 Am. Rep. 89.

79. *Miller v. Finley*, 26 Mich. 249, 12 Am. Rep. 306.

80. See *Closs v. Thiefels*, 79 Mich. 589; *Kennedy v. Shaw*, 43 Mich. 359.

81. See *Roberts v. Sholes*, 144 Mich. 215; *Young v. Shepard's Estate*, 124 Mich. 552; *World Mfg. Co. v. Hamilton-Kenswood Cycle Co.*, 123 Mich. 620; *Kulenkamp v. Groff*, 71 Mich. 675, 1 L. R. A. 504, 15 Am. St. Rep. 283; *Collins Iron*

Co. v. Burkam, 10 Mich. 283.

82. See cases cited in notes 80 and 81.

83. *Wolf v. Troxell's Estate*, 94 Mich. 573; *Hackley v. Headley*, 45 Mich. 569.

84. *Wolf v. Troxell's Estate*, 94 Mich. 573; See *Barger v. Farnham*, 130 Mich. 487; *French v. Talbot Pav. Co.*, 100 Mich. 443; *Prichard v. Sharp*, 51 Mich. 432; *Goebel v. Linn*, 47 Mich. 480.

85. *Wisner v. Bardwell*, 38 Mich. 278. See *First Nat. Bank v. Shaw*, 149 Mich. 362; *Macomb v. Wilkinson*, 83 Mich. 486.

classification, and does not necessarily imply anything more than that the paper possesses the negotiable quality⁸⁶.

It is settled that warrants or orders drawn by a village on its treasurer are not negotiable instruments, and the purchaser takes the same subject to all existing equities between the payee and any other person, without reference to the good faith of such purchaser⁸⁷; so are warrants drawn by the officers of School Districts upon the township treasurer to pay school moneys to the assessor not negotiable⁸⁸.

Certificates of deposit are negotiable instruments⁸⁹, but a certificate of deposit, made payable to the order of the depositor on its return properly indorsed, is a promissory note payable on demand⁹⁰.

(B) Acknowledgment of a debt barred by the statute of limitations must be in writing. The common law rule is that a verbal acknowledgment is sufficient to revive a liability barred by the statute, but §9740 of C. L. '97 which operates to exclude the efficiency of a mere verbal acknowledgment to renew a liability barred by the statute, does not apply to those cases which arise within the provision, while in all other cases the common law rule finds application⁹¹. It is well settled that in order to remove the bar of limitation, an acknowledgment of a debt in writing must contain an unqualified and direct admission of a present subsisting debt which the party is liable and willing to pay, and be unaccompanied by any circumstances or declarations which repel the presumption of a promise or intention to pay⁹². A writing in form of a letter, written by an agent to his principal, which reads as follows: "I have used the money and I want to turn out my property to

86. *Robinson v. Wilkinson*, 38 Mich. 299.

87. *Miner v. Vedder*, 66 Mich. 101.

88. *Fox v. Shipman*, 19 Mich. 218.

89. *Birch v. Fisher*, 51 Mich. 36.

90. *Birch v. Fischer*, 51 Mich. 36; *Trip v. Curtenius*, 36 Mich. 404, 24 Am. Rep. 610; *Cote v. Patterson*, 25 Mich. 191.

91. *Perkins v. Cheney*, 114 Mich. 567, 68 Am. St. Rep. 495.

92. *Throop v. Russell*, 145 Mich. 482, 116 Am. St. Rep. 432.

make you all right" constitutes a sufficient acknowledgment of the statute⁹³; so a writing where the creditor suggested to the debtor to sign this writing in his account book, "I extend this book account four months from April 30, 1886", is a sufficient acknowledgment of the debt to take it out of the operation of the statute⁹⁴. A renewal note given by a joint maker without authority from his co-maker will not keep the debt revived as to him⁹⁵. It is well settled that an action of tort, once barred by the statute of limitations, cannot, like an action arising out of contract, be revived by either an express or implied agreement⁹⁶.

(C) (E) These two subdivisions of contracts which must be in writing will be treated together. A uniform provision of the statute of frauds is that a contract does not fall within the operation of the statutes, if there is some note or memorandum in writing signed by the party to be charged therewith. It is only requisite and necessary that a written memorandum exists between the parties to the contract. They are the only ones who can object to the sufficiency. In treating this provision it will be necessary to divide the subject into the following sections:

- (a) When must the memorandum be made?
- (b) What must be the form of the memorandum?
- (c) What constitutes a memorandum?
- (d) What must be the contents of the memorandum?
- (e) What must be the form of the signature?
- (f) What constitutes delivery?
- (3) ' The memorandum.
- (a) *When must a memorandum be made?*

The general rule may be stated that it is necessary that the

93. *Jewell v. Jewell's Estate*, 139 Mich. 578; *Rumsey v. Settle's Estate*, 120 Mich. 372; *In re King's Estate*, 94 Mich. 411. A letter written to the mortgagee, by the mortgagor under the circumstances stated, is not such an acknowledgment as will satisfy the statute. *Rodgers v. Robson*, 147 Mich. 656; *Carr v. Carr*, 138 Mich. 396; *Highstone v. Franks*, 93 Mich. 52. Letters written by a

surety to his principal at the payee's request, urging the payment of the obligation, are not acknowledgments. *Bordon v. Fletcher's Estate*, 131 Mich. 220.

94. *Crane v. Abel*, 67 Mich. 242.

95. *Koons v. Vancosant*, 129 Mich. 260, 95 Am. St. Rep. 438.

96. *Holtham v. City of Detroit*, 136 Mich. 17.

note or memorandum be reduced to writing and made at the time of making the oral contract, but it may be made any time subsequent to the formation of the contract and before commencement of an action⁹⁷. The written acceptance of the terms of a contract by a party not bound is useless after the other has refused to perform⁹⁸.

(b) *What must be the form of the memorandum?*

The form of words in which the contract is clothed is not essential. It may be a writing of the most solemn or of the most trivial type—whether written with pencil, ink, or typewriter, it makes no difference, as long as the contract expresses the terms with such certainty that they may be understood from the writing itself or from some other writing to which it refers, provided all the essential legal elements are contained therein⁹⁹.

(c) *What constitutes a memorandum?*

The general principle is well established that any form of writing, letters¹⁰⁰, notes¹⁰¹, memorandum, entries in books¹⁰², telegrams¹⁰³, containing a complete and binding contract, or other writing relating to one connected transaction, as where a petition describing a sewer, a resolution of the city council and a bond relating to one and the same transaction¹⁰⁴, constitutes a sufficient memorandum as contemplated by the Statute. A promise cannot be part oral and part in writing¹⁰⁵, i. e. in order to constitute a sufficient memorandum the several or separate writings must show on the face of them a close connection and reference to the subject-matter, if no express reference has been made to them. If the relationship existing between the several writings must be substantiated by parol evi-

97. *Merson v. Merson*, 101 Mich. 55; *Dickenson v. Wright*, 56 Mich. 42.

98. *Wilkinson v. Heavenrich*, 58 Mich. 574.

99. *Gault v. Stormont*, 51 Mich. 636.

100. *Francis v. Barry*, 69 Mich. 312; *Corring v. Loomis*, 111 Mich. 23.

101. *Bauman v. Manistee, etc.*,

Co., 94 Mich. 363.

102. *Ayres v. Gallup*, 44 Mich. 13.

103. *McElroy v. Buck*, 35 Mich. 434; *Palmer v. Marquette, etc.*, *Rolling Mill Co.*, 32 Mich. 274.

104. *Stevens v. Muskegon*, 111 Mich. 72, 36 L. R. A. 777.

105. *Bauman v. Manistee, etc.*, Co., 94 Mich. 363; *Ayres v. Gallup*, 44 Mich. 13; *Hall v. Soule*, 11 Mich. 494.

dence, they cannot be interpreted as one memorandum nor form a complete contract¹⁰⁶.

(d) *What must be the contents of the memorandum?*

It is apparent then that any kind of document or writing, taken singly, or documents or writings, taken conjointly, will meet the requirements of a contract, if they contain the essential elements necessary to a valid contract. Accordingly the memorandum must contain with sufficient definiteness and certainty the essential element of contract¹⁰⁷ and must be complete, clear and definite without the aid of parol evidence¹⁰⁸, i. e. the parties¹⁰⁹, the subject-matter¹¹⁰, the consideration in some instances¹¹¹, the price¹¹², the terms and conditions¹¹³, and, if land is involved, the description¹¹⁴, must be clearly expressed.

(e) *What must be the form of signature?*

A written contract or a note or memorandum under the statute is of no value unless it is signed by the party charged therewith or by some authorized agent of the party. The signature may be attached to any part of the paper, provided it was placed there for the purpose of authentication. A memorandum signed by the vendor and not by the vendee is valid and binding upon both parties¹¹⁵. A memorandum signed by a party offering to exchange properties cannot create a valid contract by a verbal

106. Third National Bank v. Stell, 129 Mich. 434.

107. Gault v. Stormont, 51 Mich. 626. See Brown v. Brown, 47 Mich. 384; Lamb v. Hemman, 46 Mich. 116; Caswell v. Gibbs, 33 Mich. 331; Twiss v. George, 33 Mich. 253; Ritson v. Dodge, 31 Mich. 463; Wright v. Wright, 31 Mich. 380; Clintock v. Laing, 22 Mich. 217; Blanchard v. Railroad Co., 21 Mich. 53; Munsell v. Loree, 21 Mich. 491; Mowrey v. Vandling, 9 Mich. 39; Wilson v. Wilson, 6 Mich. 16.

108. Messmore v. Cunningham, 78 Mich. 623; Webster v. Brown, 67 Mich. 331; Gault v. Stormont, 51 Mich. 638; McElroy v. Buck, 35

Mich. 434; James v. Muir, 33 Mich. 223; Palmer v. Marquette, etc., Milling Co., 32 Mich. 274; Hall v. Soule, 11 Mich. 494.

109. Francis v. Barry, 69 Mich. 311.

110. Francis v. Barry, 69 Mich. 311.

111. Whipple v. Parker, 29 Mich. 369.

112. James v. Muir, 33 Mich. 223.

113. Webster v. Brown, 67 Mich. 328.

114. Eggleston v. Warner, 46 Mich. 610; Francis v. Barry, 69 Mich. 311; Alpena Lumber Co. v. Fletcher, 48 Mich. 555.

115. Mull v. Smith, 132 Mich. 618.

acceptance on the part of the other party¹¹⁶. The statute grants the authority for the signature to be made "by some other person thereunto by him lawfully authorized." A note or memorandum may be signed by an authorized agent¹¹⁷, but oral authority is insufficient for the sale of realty¹¹⁸. The authority of an agent to execute a written contract for the sale of lands, may be shown by an oral ratification; and the acts of the principal, from which such ratification may be inferred, are competent evidence for that purpose¹¹⁹.

(f) *What constitutes delivery?*

In an earlier section¹²⁰ this subject was treated and much that was said there finds application here. Two questions arise concerning the validity of delivery.

(1) Has there been any delivery of the contract by the obligor, if so, did it take effect?

(2) Did it take effect immediately or was it to take effect at some future time; i. e., was it delivered in escrow?

The questions rest upon the two kinds of delivery, actual and constructive.

Actual delivery is a change of physical possession; i. e., the obligor surrenders control of the written instrument to the obligee.

Constructive delivery is all acts conferring a possession which are *constructione juris* equivalent to acts of real delivery.

A simple contract can be conditionally delivered to the adverse party to take effect only upon the fulfillment of the condition¹²¹. Where an agreement was delivered to one of the parties to an agreement to be delivered when signed by him and where the memorandum spoke of a contract made and *executed*, it is apparent that no instrument is executed until delivered and in such a case, delivery, which is an essential part of the execution,

116. Wardell v. Williams, 62 Mich. 50, 4 Am. St. Rep. 814.

117. Heffron v. Armsby, 61 Mich. 505.

118. Baldwin v. Schiappacasse,

109 Mich. 170.

119. McIntosh v. Hodges, 110 Mich. 319.

120. See sec. 12 (c) Delivery.

121. Brown v. St. Charles, 66 Mich. 72.

cannot be inferred from possession¹²². A contract unless delivered is of no validity¹²³. Where an oral agreement was later reduced to writing and there were duplicates made of the writing, signed in behalf of the principal by his attorney, although he had no authority in writing, and later the copy retained by him was signed by the principal but was never delivered to the adverse party who had no knowledge of its existence, the memorandum did not comply with the statute¹²⁴.

It is well established that a deed delivered by the grantor to a third person, with instructions to hold until his death, when the depositary is to deliver it to the grantee, but the intention must be clear that the deed is to become effective upon the happening of the contingency, is a valid delivery when assented to by the grantor and grantee¹²⁵. A delivery in escrow is not valid where a deed is deposited by the grantor with a third person to be delivered upon his death to the grantee provided the grantee performs some condition precedent¹²⁶. It is only by a legal fiction that an instrument delivered in escrow may relate back to the time of the actual delivery upon the part of the depositary when he had failed to comply with the conditions by a delivery before the happening of the contingency. In such a case the delivery takes effect from the time of actual delivery¹²⁷.

§20. The Substantive Rule of Parol Evidence.

All contracts are subject to the substantive rule of contracts, the parol evidence rule. The rule relating to the proof of oral contracts is well set forth in that, when a verbal contract is proved to have been made by a party upon certain definite terms, he cannot repudiate it by alleging that he did not mean what he said. In the same way the rule is applicable to contracts made in writ-

122. *Wilbur v. Stoepel*, 82 Mich. 344, 21 Am. St. Rep. 568.

123. *Davis v. Kneale*, 103 Mich. 323, s. c. 97 Mich. 72.

124. *Cheseborough v. Pingree*, 72 Mich. 438, 1 L. R. A. 529.

125. *Wallace v. Harris*, 32 Mich. 370; *Brown v. Stutson*, 100 Mich.

574, 43 Am. St. Rep. 462; *Latham v. Udell*, 38 Mich. 238; *Thatcher v. St. Andrews' Church*, 37 Mich. 264.

126. *Taft v. Taft*, 59 Mich. 185. 60 Am. St. Rep. 291.

127. *Wallace v. Harris*, 32 Mich. 380.

ing. It is well established that where competent parties have entered into a valid contract wherein the rights and duties are definitely defined, no oral evidence is admissible to substantiate a contemporaneous verbal agreement upon the same subject-matter, or to vary, alter, modify, add to or contradict the written contract¹²⁸. Thus, where a written contract is complete in itself and its validity is admitted, parol evidence will not be admissible to show that the prior or contemporaneous oral agreement was not all reduced to writing, although the parties treated these oral agreements as being in full force and effect¹²⁹, so cannot a written contract for the sale of a machine be contradicted by parol evidence showing that it was a rental contract on commission¹³⁰. Parol evidence, under a contract to supply one with material which he needs, is not admissible to show that the contract was for a limited amount¹³¹. A payee who in assigning a note placed his name under the maker's cannot show by parol evidence that he was merely an endorser¹³², so a surety cannot show by parol evidence that an agreement was made with the payee whereby he was not to be held liable for the note¹³³. Where the understanding of the meaning and effect of a written contract is to be shown on the part of one or both of the parties, parol evidence as to the object of the contract must be excluded¹³⁴.

The legal effect of a written contract cannot be varied, altered, added to or contradicted by attempting to establish a prior or

128. *Gregory v. Village of Lake Linden*, 130 Mich. 368; *Holmes v. Holmes*, 129 Mich. 412; *Sheley v. Brooks*, 114 Mich. 11; *McCray Refrigerator Co. v. Zent*, 99 Mich. 269, 41 Am. St. Rep. 599; *Loth v. Friederik*, 95 Mich. 598; *Highstone v. Burdette*, 61 Mich. 55; *Sheets v. Starrett*, 57 Mich. 350; *Wonderly v. Holmes Lumber Co.*, 56 Mich. 412; *Kalamazoo Novelty Mfg. Works v. Macalister*, 40 Mich. 84; *Martin v. Hamlin*, 18 Mich. 354, 100 Am. Dec. 181; *Savercool v. Farwell*, 17 Mich.

308; *Adair v. Adair*, 5 Mich. 204.

129. *Holmes v. Holmes*, 129 Mich. 412.

130. *Price v. Marthen*, 122 Mich. 655.

131. *Dowagiac Mfg. Co. v. Corbit*, 127 Mich. 473.

132. *Cook v. Brown*, 62 Mich. 473 4 Am. St. Rep. 870.

133. *Kulenkamp v. Groff*, 71 Mich. 675, 15 Am. St. Rep. 283, 1 L. R. A. 594.

134. *Crane v. Bayley*, 126 Mich. 323; *Haynes v. Hobbs*, 136 Mich. 117; *Sheley v. Brooks*, 114 Mich. 11.

contemporaneous agreement by parol evidence. Thus, oral evidence is inadmissible to show that a verbal agreement was entered into by the parties whereby certain goods mentioned in the shipping receipt were to reach their destination at a certain, definite time contrary to the reasonable time mentioned in the receipt¹³⁵. A written contract, being silent as to time, cannot be altered or modified by showing that a specific time was agreed upon¹³⁶. Where a lease reads "for business purposes" a contemporaneous oral agreement will be precluded from being proved by parol evidence to show that the premises were not to be sublet for a saloon¹³⁷.

The parol evidence rule has a two-fold aspect in that it is a rule of substantive law and at the same time a rule of adjective law. As a substantive rule of law a complete and unambiguous valid contract precludes the introduction of any oral evidence, for the reason that the contract itself is the best evidence¹³⁸, but as an adjective rule of law the exceptions and limitations import into the rule the evidential nature.

The three general divisions of the evidential aspect of the rule are:

- (a) Evidence of the contract existence.
- (b) Evidence of the contract itself.
- (c) Evidence of its terms.

A simple written contract is only evidence of the contract itself, in other words it is the record of the contract, so are these which by statute are required to be in writing. The rule is the same where it is merely optional with the parties whether they put it in writing or not. But the rule is that the part or portion put in writing cannot be altered, varied, modified, added to or contradicted by parol evidence¹³⁹, yet it may become necessary to

135. *Sloman v. Nat. Express Co.*, 134 Mich. 16; *Harrow Spring Co. v. Whipple Harrow Co.*, 90 Mich. 147, 30 Am. St. Rep. 421; *Strange v. Wilson*, 17 Mich. 342.

136. *Ferguson v. Arthur*, 128 Mich. 297.

137. *Harrison v. Howe*, 109 Mich. 476.

138. *Jones v. Phelps*, 5 Mich. 218.

139. *Dowagiac Mfg. Co. v. Corbit*, 127 Mich. 473; *Sheley v. Brooks*, 114 Mich. 11; *Cohen v. Jacoboice*, 101 Mich. 409; *Skeels v. Starrett*, 57

enquire into the words and acts of the parties as well as into the writing in order to ascertain the whole contract¹⁴⁰.

(a) *Evidence of the contract's existence.*

It is essential in proving a simple contract to show by parol evidence that the party sued is the party bound¹⁴¹. It is customary in practice to set forth in the pleadings the substance of the contract or the whole contract *verbatim*¹⁴², and in the event the party suing has no copy he serves a notice on the adverse party to produce the contract.

(b) *Evidence of contract itself.*

The introduction of the written contract itself is the best evidence¹⁴³, but oral evidence may be introduced to show the invalidity of the contract¹⁴⁴.

(c) *Evidence of its terms.*

This division constitutes the real aspect of the evidential nature of the rule. It may be divided into (1) exceptions, and (2) limitations.

(1) *Exceptions.*

Exceptions may again be divided into the following subdivisions:

(a) Those matters which are presumed.

(b) Those matters which the parties had in mind and agreed upon, but did not find expression in the written contract.

(c) Those matters which by force of law are a part of the contract.

The nature of the paper constituting the contract must not be a loose memoranda such as some entries made in books of

Mich. 350; *Wonderly v. Holmes Lumber Co.*, 56 Mich. 412; *Baker v. Morehouse*, 48 Mich. 334. The merger of the verbal agreement into the written one: See *Wonderly v. Holmes Lumber Co.*, 56 Mich. 412; *Savercool v. Farwell*, 17 Mich. 308.

140. See *Exceptions*, post.

141. *Aldine Press Co. v. Ester*,

75 Mich. 100; *Savage v. Ford*, 111 Mich. 144.

142. *Angell v. Loomis*, 97 Mich. 5; *Armstrong v. Andrews*, 109 Mich. 537.

143. *Jones v. Phelps*, 5 Mich. 218.

144. *Wilbur v. Stoepel*, 82 Mich. 344, 21 Am. St. Rep. 568; *Kalamazoo Novelty Mfg. Works v. Macalister*, 40 Mich. 84.

account¹⁴⁵ and some bills¹⁴⁶, which parties frequently indulge in making to refresh their memory. Written orders although not containing the complete contract may be supplemented by parol evidence¹⁴⁷.

(a) *Those matters which are presumed.*

In cases where it has been neglected to put in a clause relating to the time of performance in a written contract, the legal presumption arises that it shall be performed at a reasonable time¹⁴⁸, and parol evidence cannot be introduced to rebut the presumption¹⁴⁹, but it is admissible to show what is a reasonable time. In the preparation and execution of a written contract the presumption arises that it was carefully, deliberately and accurately done and it must stand as written although the parties may have mistaken its legal intent¹⁵⁰. The written contract or memorandum is the test of its own completeness and the presumption is that the writing contains the whole contract¹⁵¹. If the written contract or memorandum bears evidence of careful preparation, of a deliberate regard for the many questions which would naturally arise out of the subject-matter of the contract, and if it is reasonable to conclude from its inspection that the parties have therein expressed their final intentions in regard to the matters within the scope of the writing, then it will be deemed a complete and unalterable exposition of such intentions¹⁵². If, on the other hand, the writing shows its informality on its face, there will be no

145. *Robinson v. Mulder*, 81 Mich. 75.

146. *Rowe v. Wright*, 12 Mich. 289.

147. *John Hutchinson Mfg. Co. v. Pinch*, 107 Mich. 12; *Palmer v. Roath*, 86 Mich. 602; *Werden v. Woodruff*, 38 Mich. 130; *Richards v. Fuller*, 37 Mich. 161; *Phelps v. Whitaker*, 37 Mich. 72.

148. *Ferguson v. Arthur*, 128 Mich. 297; *Stange v. Wilson*, 17 Mich. 342.

149. *Harrow Spring Co. v. Whipple Harrow Co.*, 90 Mich. 147, 30 Am. St. Rep. 421; *Coon v. Spalding*,

47 Mich. 162.

150. *Holmes v. Hall*, 8 Mich. 66, 77 Am. Dec. 444. *Tripp v. Haesig*, 20 Mich. 254, 4 Am. Rep. 388; *Case v. Peters*, 20 Mich. 298; *White v. Port Huron, etc. R. Co.*, 13 Mich. 356.

151. *National Cash Register Co. v. Blumenthal*, 85 Mich. 464; *Pammel v. Pacific Mutual Life Ins. Co.*, 157 Mich. 204; *Dye v. Thompson*, 126 Mich. 597.

152. *Jones on Construction of Commercial and Trade Contracts* p. 188, see *Nat. Cash Register Co. v. Blumenthal*, 85 Mich. 464.

presumption that it contains all the terms of the contract and parol evidence is admissible¹⁵³.

(b) *Those matters which the parties had in mind and agreed upon, but did not give expression to in the written contract.*

These cases may be divided into :

First, matters supplementary.

Second, matters collateral.

A contract may rest partly in parol and partly in writing, for it is well established that where the original contract is valid, oral and entire, with a part reduced to writing, parol evidence is admissible to supply the remaining oral parts. In other words, where a valid oral contract is partly in writing, parol evidence may be introduced supplementary thereto. The supplementary oral terms of a contract may be proved by parol evidence, but not for the purpose of contradicting, varying, modifying, altering, or adding to the written contract¹⁵⁴, and the supplemental parol parts of an agreement must be consistent with the written parts¹⁵⁵. But a written memorandum or contract coming within the statute of frauds forms the exception to this rule, for the statute requires the memorandum to contain the whole contract; i. e., it must contain all the elements of a valid agreement as well as all the terms which cannot be varied, altered, modified, added to or contradicted by parol evidence¹⁵⁶.

A collateral parol agreement on a matter upon which the written agreement is silent, and where the latter has been proved,

153. Crowley v. Langdown, 127 Mich. 51; Buhl v. Mechanics' Bank, 123 Mich. 501; Patek v. Waples, 114 Mich. 669; John Hutchinson Mfg. Co. v. Pinch, 107 Mich. 12; Liggett Spring Co. v. Mich. Buggy Co., 106 Mich. 445; Peabody v. Bement, 79 Mich. 47; Gilbert v. Bowman, 43 Mich. 477.

154. Harrison Wagon Co. v. Brown, 145 Mich. 621; Wheat v. Van Tine, 149 Mich. 314; Locke v. Wilson, 135 Mich. 593; Crowley v. Landon, 127 Mich. 51; Patek v. Waples, 114 Mich. 669; McCray Re-

frigerator, etc. Co. v. Woods, 99 Mich. 273, 41 Am. St. Rep. 599; Palmer v. Roath, 86 Mich. 602; Peabody v. Bement, 79 Mich. 47; Richards v. Fuller, 37 Mich. 161; Trevi-dich v. Mumford, 31 Mich. 469; Loud v. Campbell, 26 Mich. 239.

155. John Hutchison Mfg. Co. v. Pinch, 107 Mich. 12.

156. Stevens v. City of Muskegon, 111 Mich. 72; Francis v. Barry, 69 Mich. 311; James v. Miner, 33 Mich. 223.

Separate writings must refer to each other and parol evidence is in-

may be proved by oral evidence¹⁵⁷, provided it is not contrary to the written contract, and it is apparent that the meaning and scope of the writing cannot be altered by an independent or collateral agreement¹⁵⁸.

(c) *Those matters which by force of law are a part of the contract.*

Oral evidence may be introduced to show the nature of a custom, usage, law, ordinance, by-law, etc., as well as the bearing the custom has upon the contract in which it is referred to, and oral evidence may be admissible to show that a special meaning may be attached to one of the terms of the contract, but where each party testified to an express contract *which excluded such custom*, parol evidence is inadmissible, immaterial and irrelevant¹⁵⁹. It is apparent that where valid usages are in vogue in regard to the subject-matter of a contract, the presumption arises that such usage is a part of the contract and practically incorporated therein, and the parties are chargeable with knowledge of the same¹⁶⁰.

(2) *Limitations.*

The limitations of the rule relate to matters of interpretation, such as,

(a) Matters of identification.

(b) Matters of explanation regarding terms of contract and technical terms and expressions.

admissible to connect writings. *New York Third National Bank v. Steel*, 129 Mich. 434; *Neull v. Smith*, 132 Mich. 618; *Droll v. Diamond Match Co.*, 113 Mich. 196; *Proctor v. Plummer*, 112 Mich. 398; *Stevens v. Muskegon*, 111 Mich. 72.

157. *Patek v. Waples*, 114 Mich. 669; *John Hutchison Mfg. Co. v. Pinch*, 107 Mich. 12; *Dean v. Adams*, 44 Mich. 117; *Blackwood v. Brown*, 34 Mich. 4; *Seaman v. O'Hara*, 29 Mich. 66.

158. *Mouat v. Montague*, 122 Mich. 334; *Jennings v. Moore*, 83 Mich. 231, 21 Am. St. Rep. 601;

Vanderkarr v. Thompson, 19 Mich. 82.

159. *Farrell v. Jerry Madden Shingle Co.*, 148 Mich. 275; *Greenstein v. Burchard*, 50 Mich. 434; *Harvey v. Cady*, 3 Mich. 431.

160. *Austrain & Co. v. Springer*, 94 Mich. 343, 34 Am. St. Rep. 350; *Van Hoesen v. Cameron*, 54 Mich. 609; *Busch v. Pollock*, 41 Mich. 64; *Sager v. Tapper*, 38 Mich. 258; *Gault v. Van Zile*, 37 Mich. 22; *Bancroft v. Peters*, 4 Mich. 619; *Dwight v. Cutler*, 3 Mich. 566, 64 Am. Dec. 105; *Wright v. Caldwell*, 3 Mich. 51.

(a) Matters of identification.

Oral evidence may be introduced to explain the identity of parties¹⁶¹ and of subject-matter¹⁶² to a written contract whenever there is any doubt as to them.

(b) Matters explanatory.

Oral evidence may be admitted for the purpose of explaining the meaning of certain terms, such as, letters, figures, characters, etc. used in a written contract complete in itself. Likewise words used in a technical sense may be proved by parol evidence¹⁶³, but where an attempt is made to impart a technical meaning to words which should be taken in their popular sense, no such evidence would be allowed, for it would infringe upon the substantive rule of contracts, the parol evidence rule¹⁶⁴. Where the written contract is equivocal in its language, parol evidence may be introduced to explain the surrounding circumstances which led up to the contractual relation¹⁶⁵, and the relation of the parties as well as the subject-matter may be explained¹⁶⁶; i. e., evidence of the circumstances under which a written contract was executed, or of the sense in which equivocal words in a written contract were used, for the purpose of explaining the contract is admissible only when words have been employed which are ambiguous or equivocal in meaning¹⁶⁷. All cases of ambiguity are governed by this rule.

§21. Construction of Written Contracts.

The general rules of construction are:

First, words are to be understood and interpreted in their plain and literal meaning; i. e., with the following qualifications:

(a) evidence of usage may vary the usual meaning of words;

161. *Armstrong v. Andrews*, 109 Mich. 537.

162. *Stoddard Mfg. Co. v. Miller*, 107 Mich. 51; *Preston Nat. Bank v. Smith Middlings Co.*, 102 Mich. 462; *Kimball v. Myers*, 21 Mich. 276, 3 Am. Rep. 487.

163. *Dages v. Brake*, 125 Mich.

64.

164. *Brown v. Schiappacase*, 115 Mich. 47; *Trowbridge v. Dean*, 40 Mich. 687.

165. *Facey v. Otis*, 11 Mich. 213.

166. *Rowe v. Wright*, 12 Mich. 289; *Norris v. Showerman and Church*, 2 Dougl. 16.

167. *Facey v. Otis*, 11 Mich. 213.

(b) technical words are to be interpreted in their technical sense;

Second, a contract should be so construed that it will best effectuate the intention of the parties.

Third, the intention of the parties is to be gathered from the whole contract.

(a) *Written contracts in general.*

A cardinal axiom in the construction of a written contract is that all its parts must be examined, and effect given to every word and phrase, if practicable. By means of this axiom we arrive at the intention of the parties; and this is to be deduced from the language employed by them to express their intention. If the language used by the parties is doubtful, ambiguous or uncertain, resort may be had to the condition of the respective parties, the subject-matter of the contract, and the circumstances surrounding the transaction and connected with it, and everything except the contemporaneous and previous declarations of the parties, for the purpose of enabling the court to ascertain the intention of the parties¹⁶⁸.

(b) *Language employed in the contract.*

The language of a contract must be given its manifest meaning, and it must govern until found to be impracticable¹⁶⁹. Every word and sentence of the contract must be given effect where it is possible to do so without destroying the manifest intent of the parties¹⁷⁰. What the language of the contract expresses in terms and what is necessarily implied therefrom must be taken into account in the construction of a contract¹⁷¹. Unambiguous language must be held to express the intention of the parties¹⁷², and when that intention is apparent from the whole instrument, and

168. *Plano Mfg. Co. v. Ellis*, 68 Mich. 101; *McGraw v. Germania Fire Ins. Co.*, 54 Mich. 145; *Fraser v. Fraser's Estate*, 42 Mich. 275; *Vary v. Shea*, 36 Mich. 386; *Miller v. Spencer*, 3 Mich. 127; *Paddock v. Pardee*, 1 Mich. 421; *Norris v. Showerman*, Walk. Ch. 206.

169. *Gillett v. Bowman*, 43 Mich.

477.

170. *Switzer v. Pinconning Mfg. Co.*, 59 Mich. 488.

171. *Goodrich v. Hubbard*, 51 Mich. 62.

172. *Plano Mfg. Co. v. Ellis*, 68 Mich. 101; *Baker v. Baird*, 79 Mich. 256.

not repugnant to any rule of law, it will control the meaning of a particular word or phrase, unguardedly used, and seeming to indicate a different intention¹⁷³. The construction must be as reasonable as the terms of the contract will allow¹⁷⁴, and where a special agreement by one of the parties to a contract is obscure, it may properly be interpreted most strongly against the party making it¹⁷⁵. Stipulations for forfeiture are strictly construed¹⁷⁶. The intention of the parties will not be defeated by false English, or irregular arrangement, unless the defect is so serious as to absolutely preclude the ascertainment of the meaning of the parties by means of the whole document and such intrinsic aids as the law permits¹⁷⁷. A nice grammatical construction will not always be regarded in the construction of a contract¹⁷⁸.

(c) *Written and printed parts of a contract.*

If there is any inconsistency between the written and printed parts of a contract, the written part governs¹⁷⁹.

(d) *Clauses which are in conflict.*

Where one clause of a contract provides expressly for the paying over to the adverse party certain surplus moneys mentioned in the agreement, a construction of another clause in the contract not clearly making such a demand, such as authorizing the party to retain the larger portion of the surplus, is not admissible¹⁸⁰.

(e) *Written instruments must be construed together.*

Two or more instruments, made by the parties at the same time and relating to the same subject-matter, constitute one contract, and it is the duty of the court to read and construe them together as parts of a single transaction, and not as instruments, alien in their origin, object or subject matter¹⁸¹, but the fact that an

173. *Bird v. Hamilton*, Walk Ch. 361.

174. *Blitz v. Union Steamboat Co.*, 51 Mich. 559.

175. *Wetmore v. Patterson*, 45 Mich. 439.

176. *Small v. Robarge*, 132 Mich. 357.

177. *Newton v. McKay*, 29 Mich. 1.

178. *Beadle v. Sage Land & Improvement Co.*, 140 Mich. 149.

179. *Mansfield Mach. Works v. Lowell Common Council*, 62 Mich. 546.

180. *Vary v. Shea*, 36 Mich. 368.

181. *Keagle v. Pessel*, 91 Mich. 618; *Neyens v. Worthington*, 150 Mich. 580; *McNamara v. Garbett*, 68 Mich. 454, 13 Am. St. Rep. 355; *Su-*

agreement between parties mentions another agreement between one of them and a third party, and uses the same language in part, quoting as much as was pertinent, does not necessitate their being read together, if not so intended, and where each stands on its own basis, and is capable of being construed and enforced independently¹⁸².

(f) *Time as of the essence of contract.*

The rule may be stated that time is not so far of the essence of the contract as to prevent its enforcement in equity within a reasonable time after the lapse of the time specified¹⁸³. Justice Manning said¹⁸⁴: "That by the terms of the contract, it was expressly understood and declared that time is and shall be deemed and taken as of the very essence of the contract. Time is always of the essence of a contract when an act is required to be done within a specified time; as much so as the act itself, and no more. Every part of a contract is of its essence. It is not very clear what courts and text-writers who use this phrase mean, unless it be that a subsequent performance cannot be decreed, under all the circumstances of the case, by a court of equity, by way of relieving against the forfeiture of the contract, without doing injustice to the party against whom the relief is asked. This is the principle equity acts on in relieving against forfeitures. Nor will it, by any stipulation of the parties, be ousted of its jurisdiction, or refuse to relieve against the exaction of the pound of flesh, although the parties have in express terms stipulated for it."

(g) *Reasonable time implied.*

The rule is well established that where a contract does not set a time for performance, the law implies that it is to be performed within a reasonable time, which must depend upon all the facts and circumstances¹⁸⁵.

gar Mfg. Co. v. Haines, 36 Mich. 385; Wilcox v. Allen, 36 Mich. 160; Dugeon v. Haggart, 17 Mich. 273; Norris v. Showerman, 2 Dougl. 16; Disbrow v. Jones, Har. 45; Brownson v. Green, Walk. Ch. 56.

182. Barry v. Davis, 33 Mich. 515.

183. Moote v. Scriven, 33 Mich. 500.

184. Richmond v. Robinson, 12 Mich. 201; Voltz v. Noble, 49 Mich. 453; Kimball v. Goodburn, 32 Mich. 10.

185. Stange v. Wilson, 17 Mich.

(h) Penalties and liquidated damages.

In an action on a contract the measure of damages is affected by the form of the claim asserted¹⁸⁶. The distinction between penalties and liquidated damages rests upon the certainty and uncertainty of value for the matter of the contract, i. e., "if the contract is for a matter of certain value and a sum is fixed to be paid on breach of it which is in excess of that value, then the sum is a penalty and not liquidated damages, but if the contract is for a matter of uncertain value and a sum is fixed to be paid on breach of it, the sum is recoverable as liquidated damages"¹⁸⁷. Although "there is nothing illegal or unreasonable in the parties, by their mutual agreement, settling the amount of damages, uncertain in their nature, at any sum upon which they may agree;" yet the principle at which the law aims is well settled that just compensation must be made for the injury sustained, and parties are not permitted to stipulate and fix the measure of damages that shall be recovered in case of a breach of the contract, grossly in excess of what the damages should actually appear to be¹⁸⁸. Justice Christiancy said¹⁸⁹: "The law, following the dictates of equity and natural justice, in cases of this kind, adopts the principle of just compensation for the loss or injury actually sustained; considering it no greater violation of this principle to confine the injured party to the recovery of less, than to enable him, by the aid of the court to extend more. It is the application, in a court of law, of that principle long recognized

342; *Peabody v. Bement*, 79 Mich. 17; *Hill v. Matthews*, 78 Mich. 377; *Toledo & A. A. R. Co. v. Johnson*, 55 Mich. 456; *Coon v. Spaulding*, 47 Mich. 162; *Bolton v. Riddle*, 35 Mich. 13.

Time as to performance: See *Robert Smith Printing Co. v. Board of State Auditors*, 148 Mich. 561; *Edmunds v. Evarts*, 146 Mich. 485; *Turner v. Muskegon*, 97 Mich. 166; *Grand Rapids & B. C. R. Co. v. Van Dusen*, 29 Mich. 431.

Time as to payment: See *Johnson v. Henry*, 127 Mich. 548; *Sarmiento*

v. The Catherine C., 110 Mich. 120; *Johnson v. Lyon*, 75 Mich. 477; *Smith v. Ross*, 51 Mich. 116; *Curtiss v. Goodenow*, 21 Mich. 18.

186. *Walter A. Wood Reaping and Mowing Co. v. Smith*, 50 Mich. 565; 45 Am. Rep. 57.

187. *Anson on Contracts*, p. 255.

188. *Myer v. Hart*, 40 Mich. 517; *Richardson v. Woehler*, 26 Mich. 90; *Daily v. Litchfield*, 10 Mich. 29; *Davis v. Freeman*, 10 Mich. 188; *Jaquith v. Hudson*, 5 Mich. 123.

189. *Jaquith v. Hudson*, 5 Mich. 123.

in courts of equity, which, disregarding the penalty of the bond, give only the damages actually sustained. The principle may be stated to be, in other words, that courts of justice will not recognize or enforce a contract, or any stipulation of a contract, clearly unjust and unconscionable; a principle of common sense and common honesty so obviously in accordance with the dictates of justice and sound policy, as to make it rather a matter of surprise that courts of law had not always, and in all cases adopted it to the same extent as courts of equity." The intention of the parties is not the test in this class of cases, for the real question will be found to be, not what the parties intended, but whether the sum is, in fact, in the nature of a penalty; and this is to be determined by the magnitude of the sum, in connection with the subject-matter, and not at all by the words or the understanding of the parties¹⁹⁰.

§22. Conditions in Written Contracts.

In general, condition may be defined as being some event or circumstance, based upon uncertainty and made part of the contract, by which, upon its happening, the legal relation of the parties is changed, or a clause in a contract or agreement which has for its object to suspend, rescind, or modify the principal obligation, operates as a condition. Conditions are either express or implied. They are express when they appear in the contract; they are implied whenever they result from the operation of law, from the nature of the contract, or from the presumed intent of the parties. They are also divided into conditions precedent and subsequent. A condition precedent is one which must happen before either party becomes bound by the contract. A condition subsequent is one which follows the performance of the contract, and operates to defeat and annul it upon subsequent failure of either party to comply with the condition¹⁹¹. Where the whole contract was taken together, it was clearly implied that the stipu-

190. *Jaquith v. Hudson*, 5 Mich. 123.

191. *Story, Contr. Secs.* 40, 42, 43.

lations contained therein were subject to the implied condition that said mill owners should first saw and deliver the lumber under their contract¹⁹², so in construing the contract as a whole, the services of the plaintiff in procuring the location of the land were a condition precedent to the return of the warrants¹⁹³. Again, the clause in the contract in question relating to supplying water was a condition subsequent to acceptance, and the covenant a continuing one, protecting the city from the payment of rent in case the water was not supplied according to its terms¹⁹⁴. A court of equity cannot relieve against the breach of a condition, i.e., the substantial difference which governs courts of equity in cases of conditions, is not whether the condition be precedent or subsequent, but whether compensation can, or cannot be made¹⁹⁵.

See Forms §176, §177, §178.

192. *Hunter v. New York and Saginaw Solar Salt Co.*, 14 Mich. 98.

193. *Hill v. Matthews*, 78 Mich. 377.

194. *Adrian Water Works v. City of Adrian*, 64 Mich. 585.

195. *Chipman v. Thompson*, Walk. 405.

CHAPTER IV.*

PARTICULAR WRITTEN CONTRACTS.

- §23. Particular Contracts.
- §24. Adoption of Children Contracts.
- §25. Advertising Contracts.
- §26. Agricultural Contracts.
- §27. Antenuptial Contract.
- §28. Apprentice Contracts.
- §29. Arbitration and Award Contracts.
- §30. Attorney and Client Contracts.
- §31. Bailment Contracts.
- §32. Board, Lodging and Support Contracts.
- §33. Board of Trade Contracts.
- §34. Boundary Contracts.
- §35. Building Contracts.
- §36. Conditional Sale Contracts.
- §37. Compromise and Settlement Contracts.
- §38. Composition with Creditors' Contracts.
- §39. Corporation Contracts.
- §40. Employment Contracts.
- §41. Exchange of Property Contracts.
- §42. Guaranty Contracts.
- §43. Joint Adventures Contracts.
- §44. Insurance Contracts.
- §45. Land Contracts.
- §46. Loans and Advances Contracts.
- §47. Manufacturing Contracts.
- §48. Municipal Corporation Contracts.
- §49. Option Contracts.
- §50. Partnership Contracts.
- §51. Party Wall Contracts.
- §52. Principal and Agent Contracts.
- §53. Principal and Surety Contracts.
- §54. Riparian Contracts.
- §55. Sale Contracts.
- §56. Subscription Contracts.
- §57. Telegraph and Telephone Contracts.
- §58. Trade and Business Contracts.
- §59. Trust Contracts.

§23. Particular Contracts.

Particular contracts are such which relate to the nature of the subject-matter, to the nature of the relation of the parties, or

*This chapter is merely suggestive and partakes more of the nature of a digest than a logical treatment of the subject. The cases selected are

such that relate mainly to the elements and contents of the particular contract.

to the nature of the object for which the contract was intended. These elements are considered in the construction of these contracts, and for this reason the purpose has been to set forth such decisions as construe or affect the particular contract in question and to add wherever necessary such new requisites as the law requires in the particular instance.

§24. Adoption of Children Contracts.

Adoption may be defined to be the act by which relations of paternity and affiliation are recognized as legally existing between persons not so related by nature¹. The right of adoption is established by statute and the proceeding is to materially affect the succession of property and the rights of natural heirs². The assent of the minor, when required, if not expressly given, will be presumed, unless his dissent expressly appears, but the court must be satisfied that such proceedings were for the minor's benefit³. Where a written contract of adoption was not signed by the foster-mother, and the deceased foster-father had never entered proceedings for adoption, and the contract on its face authorized the foster-parents to make the child their heir, but contained no binding covenant to that effect, although certain conveyances by way of gifts were made to the foster-child, who knew it was not the child of these parties, in its natural name, the court decided that the foster-child was not entitled to recovery from the foster-parents as their heir⁴.

See Forms §131, §132.

§25. Advertising Contracts.

An agreement or stipulation entered into by the publisher of a paper for advertising space must be certain and definite, and it is subject to the implied condition that the space cannot be

1. Morrison v. Sessions' Estate,
70 Mich. 297.

2. Morrison v. Sessions' Estate,
70 Mich. 297.

3. Morrison v. Sessions' Estate,
70 Mich. 297.

4. Bowins v. English, 138 Mich.
178.

used to hold up the publisher to disgrace or ridicule⁵. A general agreement to insert advertisements implies the furnishing of copy by the advertiser⁶. Where A contracted with B to place their entire advertising as they might direct, the commissions to be equally divided, and where A contracted in his own behalf with certain newspapers for the use of a certain amount of space at a specified rate per year, his contracts having no reference on their face to the work of defendants, B would not be liable unless it appeared that all of the space was contracted for under their express authority on their behalf, and unless it was shown that A had been actually damnified, which he would not be if he got other work to fill the space contracted for⁷.

See Forms §133, §134.

§26. Agricultural Contracts.

Where a contract of this kind was entered into containing the clause, "to stump and clear ready for the plow" certain land for an agreed price per acre, payable "as fast as the land is ready for the plow and approved by the owner," it is decided that such approval is a prerequisite only to the right of the contractor to payments in advance of a full performance of the contract⁸.

See Forms §136.

§27. Antenuptial Contracts.

An antenuptial contract made by a woman where, in consideration of five dollars and of love and affection, she releases, after marriage to her intended husband and after his death, all her right of dower in his estate, is insufficient to bar dower⁹. Agreements of this kind are entitled to record, and the defective execution may be cured by C. L. '97, §9051¹⁰. A verbal promise to convey land in consideration of marriage is a sufficient moral

5. Fowler v. Hoffman, 31 Mich. 215.

6. Mail and Express Co. v. Wood, 140 Mich. 505.

7. Savage v. Drs. K. & K., 59 Mich. 400.

8. Johnson v. Henry, 127 Mich. 548.

9. In re Estate of Pulling, 93 Mich. 274.

10. Aultman, Miller & Co. v. Pettys, 59 Mich. 482.

obligation to make its fulfillment legal, except as to creditors¹¹. Where an antenuptial agreement, a mortgage and note, mentioned in the agreement, were executed and deposited with a third party and by him redelivered to the respective parties after marriage, the delivery by him related back to the first delivery and made the contract binding¹².

See Forms §§220, 221, 222.

§28. Apprentice Contracts.

The matter of apprenticeship is regulated by statute, chapter 235, C. L. '97. §§8749, 8750 reads as follows: "Every male infant and every unmarried female under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may of his or her own free will bind himself or herself, in writing, to serve as clerk, apprentice or servant, in any profession, trade or employment, if a male, until the age of twenty-one years, and if a female, until the age of eighteen years or until her marriage within that age, or for any shorter time; and such binding shall be as valid and effectual, as if such infant was of full age at the time of making such engagement. Such consent shall be given:

First. By the father of the infant. If he be dead, or be not in legal capacity to give his consent, or if he shall have abandoned and neglected to provide for his family, and such fact be certified by a justice of the peace of the township, and endorsed on the indenture; then,

Second. By the mother. If the mother be dead, or be not in a legal capacity to give such consent, or refuse; then,

Third. By the guardian of such infant duly appointed. If such infant has no parent living or none in a legal capacity to give consent, and there be no guardian; then,

Fourth. By any two justices of the peace of the township where such infant shall reside;

11. *Manke v. Manke*, 75 Mich. 435.

12. *Koch v. Koch*, 126 Mich. 187.

Fifth. By the recorder of any city in the county, or by the circuit or probate judge of such county."

A discharge for disobedience as provided for in a clause, contained in an apprenticeship contract, does not give the authority to the employer to pass upon what constitutes an act of disobedience¹³.

See Form §137.

§29. Arbitration and Award Contracts.

Arbitration may be defined to be the submission, by the parties injuring and injured, of any matter in dispute, concerning any personal chattel or personal wrong, to the judgment of two or more persons who act as arbiters and decide the controversy¹⁴. At common law a parol submission is good and not forbidden by any statute. A decision is a valid award where the parties submitted the matter in controversy to the attorney as a common arbiter who heard them and made his decision¹⁵. C. L. '97, chapter 302 relates to arbitration and award and §10924 exempts a married woman from the persons who are thereby authorized to enter into a statutory arbitration, but it does not prohibit her from entering into an agreement to arbitrate under the common law, neither does §8690 prohibit her from entering into such an agreement¹⁶. The arbitration clause in a building contract which provided that the contractor, under the direction of the architect, "acting, for the purposes of the contract, or agent of the owner," should provide all materials, etc., was valid and binding upon the parties¹⁷. If the agreement to submit to arbitration contains no covenant or agreement not to sue, or that the awards shall be made the foundation of a judgment, it is merely an agreement to arbitration under the common law, and enforceable only by action, in case either party fails to comply with it, for the

13. Bradley v. Perkins, 138 Mich. 356.

14. 3 Bl. Com. 10.

15. Cady v. Walker, 62 Mich. 157, 4 Am. St. Rep. 834.

16. Hoste v. Dalton, 137 Mich. 522.

17. Weggner v. Greenstine, 114 Mich. 310.

statute only refers to such agreements as fix upon some designated court in which judgment shall be entered on the award¹⁸.

See Forms §138, §139, §140.

§30. Attorney and Client Contracts.

In general the rule may be set down that the employment of an attorney does not differ in its incidents or in the rules which govern it, from the employment of an agent in any other capacity or business¹⁹, and in the exercise of his employment the implied duty is to use and exercise reasonable skill, care, discretion, diligence and judgment²⁰, for he is not an insurer of the results in a case in which he is employed, unless he makes a special contract to the effect, and for that purpose²¹. Neither is he responsible for his opinion on a point of law where it is doubtful and he acts in good faith²². It is contemplated under a contract by an attorney to procure payment of a legacy to the heirs for a contingent fee based on a percentage of the amount collected, that the attorney shall perform whatever services may be necessary, including services in the taking of an appeal rendered necessary by an erroneous decision of the trial court²³. A contract between an attorney and a married woman, whereby the attorney should receive a percentage as compensation on the amount of alimony allowed in a divorce case, is against public policy and therefore void²⁴.

In dealings between attorney and client the rule has been well established that attorneys will not be permitted to turn to their profits, any gifts, conveyances and securities, given by a client to his attorney, more especially when they are connected with the subject-matter of litigation²⁵. In a case where an attorney acts in the capacities, both of purchaser and confidential adviser,

18. McGunn v. Hanlin, 29 Mich. 475.

19. City of Detroit v. Whitmore, 27 Mich. 281.

20. Eggleston v. Boardman, 37 Mich. 14.

21. Babbitt v. Bumpus, 73 Mich.

331, 16 Am. St. Rep. 585.

22. Gray v. Emmons, 7 Mich. 533.

23. Cavanaugh v. Robinson, 138 Mich. 554.

24. McCurdy v. Dillon, 135 Mich. 678.

25. Gray v. Emmons, 7 Mich. 533.

he is bound to observe the utmost good faith towards the party with whom he is dealing; and to draft all papers with sufficient care and professional skill, so as to make them express the real understanding and agreement of the parties²⁶. Where a wife being desirous of devising her property so that her husband should have the benefit of it and not his creditors, devised the property to her attorney and another at his suggestion, upon an oral agreement that they should hold the same for her husband's use, the facts being undisputed and the attorney admitting the whole case and signifying his readiness to perform on his part, the trust was enforced in equity against the other devisee²⁷.

See Forms §142.

§31. Bailment Contracts.

Bailment as defined by Chancellor Kent is a delivery of goods in trust upon a contract, express or implied, that the trust shall be duly executed, and the goods restored by the bailee, as soon as the purpose of the bailment shall be answered.

The person delivering the goods is called the bailor.

The person to whom the goods are delivered is called the bailee.

Bailments are practically of three kinds:

First, bailments in which the trust is for the benefit of the bailor, or some person whom he represents, and which embrace deposits and mandates.

Second, bailments in which the trust is for the benefit of the bailee, or some person represented by him, as the *commodatum*, or gratuitous loan for use.

Third, bailments in which the trust is for the benefit of both parties, as pledges or pawns, and hiring and letting for hire.

In general it may be said that there are three degrees of care and diligence required of the bailee in the exercise of his duties and corresponding to these three degrees are three degrees of negligence for which he is responsible. These latter degrees are

26. *Payne v. Avery*, 21 Mich. 524. 27. *Hooker v. Axford*, 33 Mich. Agreement to pay costs by attorney. 453.
See *Wiley v. Crane*, 69 Mich. 17.

determined in accordance with the purpose and objects of the bailment. Thus:

First, in this class, the bailee is required to exercise only slight care, and is responsible only for gross negligence.

Second, in this class, he is required to exercise great care and is responsible even for slight neglect.

Third, in this class, he is required to exercise ordinary care and is responsible for ordinary neglect.

Diligence is also divided into three degrees as follows:

First. Ordinary diligence is that degree of diligence which men of ordinary prudence exercise in respect to their own concerns.

Second. Great or extraordinary diligence is that which very prudent men take of their own concerns.

Third. Slight diligence is that degree of diligence which men, habitually careless, or of little prudence, generally exercise in the management of their own business.

Correspondingly, negligence is divided into three degrees as follows:

First. Ordinary negligence is the want of ordinary diligence.

Second. Slight negligence is the want of great diligence.

Third. Gross negligence is the want of slight diligence.

Diligence may be defined as the doing of things at the proper time.

Special contracts in which these essentials are affected or modified are reduced to writing, such as bills of lading, warehouse receipts, etc.

Where a party stored a quantity of wheat with a warehouseman and took a receipt which read in part as follows: "..... deliverable upon return of this receipt and on payment of charges," etc., the contract is one of bailment and not of sale²⁸. A contract for the conditional sale of a piano upon the payment of the purchase price in installments which provides that the piano shall remain the property of the vendors until the full

28. Erwin v. Clark, 13 Mich. 10.

amount shall be paid, and that it shall in the meantime remain at the residence of the vendee at a place specified unless the written assent of the vendors is given to move the same, creates a bailment in the vendee, and the condition against removal is a valid one²⁹. A contract entered into with a miller, wherein he is to pay on delivery or at any subsequent time when payment shall be demanded, for all the wheat received, and wherein he is to have the use of the wheat in his milling business, is a contract of absolute sale³⁰. Where a letter from a retail dealer in jewelry to a wholesale dealer states that the former has a customer for a diamond and asks the latter to send him a number of stones from which his customer can make his choice, the letter is merely a request to send goods with the privilege of purchase and it is in the nature of a bailment³¹. It is settled that, although the landlord in whom possession of his store, containing merchandise, is surrendered, may not be a warehouseman within the meaning of the statute, he is entitled to a lien as such, as against the tenant, where he immediately notifies the latter that he will make a claim for storage if the goods are not removed³².

See Forms §168, §169, §170, §171.

§32. Board, Lodging and Support Contract.

These contracts are usually made in the form of conveyances. The undertaking on the part of a grantee who bound himself to pay the debts of the grantor, and to board, lodge and clothe him during his natural life in consideration of the grantor's conveying to him his farm, are personal covenants and not conditions of the grant³³.

See Forms §147, §148, §149, §150.

29. *Whitney v. McConnell*, 29 Mich. 12; *Ledyard v. Hibbard*, 48 Mich. 421, 42 Am. Rep. 474.

30. *Jones v. Kemp*, 49 Mich. 9. As to not constituting a contract of bailment: see *Havens v. Church*, 104 Mich. 135.

31. *Knights v. Piella*, 111 Mich.

9, 66 Am. St. Rep. 375.

32. *Scheider v. Dayton*, 111 Mich. 396.

33. *Campau v. Chene*, 1 Mich. 400. See *Carr v. McCarthy*, 70 Mich. 258; *Pratt v. Pratt*, 42 Mich. 174; *Wetmore v. Aldrich*, 10 Mich. 515.

§33. Board of Trade Contracts.

In accordance with C. L. '97, §11373, all purchases and sales of stock, bonds, grain, petroleum, cotton or other provisions or produce on margins for future or optional delivery, without any intention of receiving or paying for the property so bought or sold, are prohibited. Every contract for a future delivery of grain is not a gambling contract. The statute only prohibits the pretended, but not the actual buying or selling of the grain. It is only in such cases where the parties mutually understand it to be a sale on margin, i.e., where the one is to pay and the other is to receive the amount of fluctuation in the market, that the statute finds application³⁴.

See Forms §151, §152, §153, §154.

§34. Boundary Contracts.

The general rule may be stated that an agreement between adjoining landowners establishing a boundary line, acquiesced in by the parties, is binding, although the line established is not the original one³⁵. Where on an issue as to the location of a boundary line and where evidence was examined, it was a question for the jury whether the plaintiff had agreed, before he had occupied for more than fifteen years, to have the line fixed by a survey³⁶.

§35. Building and Contractors Contracts.

In general, building contracts are such as relate to the construction of buildings, but it was deemed advisable to treat under

34. Carland v. Western Union Telegraph Co., 118 Mich. 369. See DeMary v. Breitenshaw's Estate, 131 Mich. 326; Clark v. Kent Circuit Judge, 125 Mich. 449; Donovan v. Daiber, 124 Mich. 49.

35. Breakey v. Woolsey, 149 Mich. 86; Brown v. Bowerman, 134 Mich. 695; Pittsburg and L. A. Iron

Co. v. Lake Superior Iron Co., 118 Mich. 100. See Olin v. Hendersen, 120 Mich. 149; DeLong v. Baldwin, 111 Mich. 466; Wilson v. Hoffman, 70 Mich. 552; Jones v. Pashby, 67 Mich. 459, 11 Am. St. Rep. 580; Hayes v. Livingston, 34 Mich. 384, 22 Am. St. Rep. 533; Dart v. Barbour, 32 Mich. 267.

36. Lamb v. Lamb, 139 Mich. 166.

this heading all contracts which relate to the building or constructing of any particular object or thing which is based upon particular specifications. A building contractor who sublets a part of the work by contract expressly providing that the subcontractor is to furnish no material, and that the work shall be done without delay, is bound to see that material is supplied as needed, and his neglect to do so renders him liable to the subcontractor for the loss of time occasioned thereby, notwithstanding the fact that as between the contractor and the owner, the latter was to furnish all material, of which fact the subcontractor had knowledge³⁷. A contract in writing which on its face is complete and relates to the installation of a hot-water-heating apparatus, guaranteed to warm a dwelling to a specified temperature, cannot be varied by parol evidence³⁸. Under the parol evidence rule it is apparent that where a contract specifies the price to be paid, the contractors in an action to recover for erecting a building cannot introduce evidence to show what it was worth to erect³⁹, and letters and conversations, which passed between the parties prior to the time the contract was reduced to writing, are inadmissible to show that the building was to be cheaply built, especially where the contract is unambiguous in its terms, and specifies the kind of materials to be used, and that the work is to be done in a good and substantial manner⁴⁰.

None of the rules adopted by civil engineers or surveyors, or any of the customs of the country, are admissible to vary the terms of the special contract entered into by the parties for digging a ditch⁴¹.

A contract for grading and preparing for ties the bed of a railroad is held to contemplate, as a general rule, that the roadbed will be an embankment made by earth thrown up from

37. *Perine v. Standfield*, 107 Mich. 553. See *Goldner v. Finn*, 67 Mich. 340; *Bell v. Harvey*, 50 Mich. 59.
38. *Mouat v. Montague*, 122 Mich. 334.

39. *Eaton v. Gladwell*, 108 Mich. 678.
40. *Eaton v. Gladwell*, 108 Mich. 678.
41. *Harvey v. Cady*, 3 Mich. 431.

ditches on either side, but that the "cuttings on the line of the road" referred to, are not these ditches, but the cuttings necessary in places where the natural surface was higher than the level of the road, and to be brought to grade, required to be cut down; and that all earth thrown into embankments, whether taken from the ditches or from cuttings on the line, should be measured in the embankment, and not as excavation, according to the space it occupied before removal, and that all the earth thrown into spoil banks was to be measured as excavation; and a ruling that the contractors were to be allowed for all shrinkage of the earth, arising from its being thrown into embankments, and measuring less there than it did where it was taken from, is held erroneous; and a provision in the contract that the contractors shall "proceed with such diligence and with such force of laborers as the executive committee of said company may direct, to perform the work," etc., is construed to be subordinate to, and qualified by the provision directly following it, requiring the work to be completed by a day named, and to be intended to enable the company to compel completion by the day specified⁴². Where a railway contractor made a subcontract for building a section of road, and stipulated therein that if the work should not be carried on with sufficient force and energy, the chief engineer of the road might, on giving written notice to the subcontractor, declare the subcontract forfeited, or might take possession of the work and carry it on at the subcontractor's expense and for his benefit, the chief engineer being a stranger to the agreement he could not be compelled to give the notice, and that a written notice from the contractor to the subcontractor was sufficient where the engineer had already orally notified both that the work was not advancing satisfactorily⁴³. An agreement to pay a certain sum to the order of a specified railroad company in six months after the first cars run *over the road* from one specified point to another inside the contemplated

42. Grand Rapids & Bay City R. Co. v. Van Dusen, 29 Mich. 431.

43. Hendrie v. Canadian Bank of Commerce, 49 Mich. 401.

termini, does not postpone the period of payment until after the completion of the whole road⁴⁴.

See Forms §§155 to 167.

§36. Conditional Sale Contracts.

The rule of law that permits a vendor to retain the title to goods bartered by him, and placed apparently in the exclusive possession, control, and ownership of the vendee, until the whole purchase price is paid, without notice to parties dealing with such vendee, is a harsh one and should not be enforced except in cases where the agreement is explicit and unambiguous⁴⁵. A conditional sale contract may be defined as one containing all the essential elements of contract and under which the buyer takes possession of the property, but the seller retains the title and the right to control the removal thereof⁴⁶. It is apparent that there are certain features by which conditional sales contracts are distinguished from other transactions, for where a bill of sale is absolute on its face, if taken as security, it is a chattel mortgage⁴⁷, but where chattels, such as machinery, etc., are sold and become part of the realty under a lease for a given term, at a fixed rental, with an option in the lessee to purchase at a specified price, the transaction stands upon the same basis as a contract of conditional sale, so far as the rights of third parties are concerned⁴⁸. In this case⁴⁹ the court said: "The rule is settled beyond controversy in the state that, as to conditional sales of personal property retaining the title in the vendor until paid for, no subsequent vendee obtains the title while the property remains personalty. This is upon the theory that the possession of movable property, known as chat-

44. Toledo and A. A. R. Co. v. Johnson, 55 Mich. 456.

45. Edwards v. Lymon, 65 Mich. 348.

46. Van Buren v. Stubbins, 149 Mich. 206; Whitney v. McConnell, 29 Mich. 12.

47. Buhl Iron Works v. Teuton, 67 Mich. 623; Cooper v. Brock, 41

Mich. 488; Haynes v. Hobbs, 136 Mich. 117; Damm v. Mason, 98 Mich. 237; Read v. Horner, 90 Mich. 152; Weed v. Merrick, 62 Mich. 414; Warner v. Beebe, 47 Mich. 435.

48. Wickes Bros. v. Hill, 115 Mich. 333.

49. Wickes Bros. v. Hill, 115 Mich. 333.

tels, is not conclusive of ownership or right of possession, and that he who buys takes subject to the title of the real owner. When personal property is attached to, and becomes a part of the realty, a different rule applies. Title of record and possession of real estate are usually conclusive, and a *bona fide* holder takes title free from any existing equities. As between the original vendor and vendee no title passes, and as between them the vendee cannot make it realty contrary to his agreement. In such cases the intention of the parties must govern. When, however, the vendor sells machinery which it is well understood may, and, in the absence of agreement, does, become part of the realty by being so attached that it cannot be removed without injury, and thereby places it in the power of his vendee to so attach it, and sell or mortgage to innocent third parties, the better and more just rule is that he must suffer."

An order blank or a written instrument, in which there is contained a reference to promissory notes or a promise to pay in installments at stated intervals the purchase price of the goods or article bought, and an agreement that the title to the property shall remain in the vendor until the notes or purchase price is fully paid, and in the event of default the payments made are to be forfeited and the property taken by the vendor, is in form a conditional sale contract and sufficient to sustain an action⁵⁰.

See Forms §§179 to 187.

§37. Compromise and Settlement Contracts.

A compromise for a claim for damages on account of fraud practiced in the sale of land cannot be affected by the payment to the president of a company who perpetrated the fraud, of amount due him for services rendered to the corporation, and the assignment of his stock to a person in trust for the corporation, and his withdrawal from all connection therewith⁵¹. The

50. *White v. Robinson*, 50 Mich. 73. See *Oliver Chilled Plow Works*

v. Dolan, 139 Mich. 668.

51. *Stoney Creek Woolen Co. v. Smalley*, 111 Mich. 321.

acceptance and use of a check sent to an employee upon his request for unpaid salary up to the time of his discharge does not constitute a satisfaction of his claims for damages in violation of his contract⁵². Where a party receives a compromise note from his debtor, with collateral security, agreeing that if paid when due the original debt shall be discharged, otherwise of force, and after the compromise note becomes due and is unpaid, sells and transfers the same with the collateral and the original debt, he thereby confirms the compromise; and the purchaser cannot claim the amount of the original debt on the ground of forfeiture of the compromise agreement before he purchased⁵³. It is apparent that a settlement in the nature of a compromise must be made as such, and must be so understood by parties making it⁵⁴.

See Forms §174, §175.

§38. Composition With Creditors Contracts.

The general rule has been well established that a mere agreement to accept a composition, or a part of a debt in discharge of the whole, will not operate as a release of the debt, if the composition is not duly paid, i.e., in order to discharge the debtor for liability for debts included in his statement, he must pay or tender unconditionally to his creditor the composition payable upon the admitted debt, giving the creditor the opportunity of accepting or rejecting it; and, failing to do so, he cannot, in an action by the creditor, avail himself of the composition agreement. It is essential that in order to bind a non-assenting creditor by composition proceedings, and to operate as a discharge of his debt, the requirements of the statute must be strictly pursued⁵⁵.

See Forms §173.

52. Proctor v. Hobart W. Cable Co., 145 Mich. 503; Hickey v. Hinsdale, 12 Mich. 99.

53. Hale v. Holmes, 8 Mich. 36.

54. Jennison v. Stone et al., 33 Mich. 99.

55. Harrison v. Gamble, 69 Mich. 96.

§39. Corporation Contracts.

"The indispensable and most important active power of a corporation is its power to contract. Within the scope of the corporate purposes, this power exists in all corporations as fully as in natural persons. The contracts of corporations are governed by the same general rules of law that apply to contracts of private individuals. It is, however, competent for the legislature to prescribe the form in which future corporate contracts shall be made⁵⁶."

See Forms §§190 to 192.

§40. Employment Contracts.

It is self-evident that no offer to employ another binds the person making it to pay for services unless he is given to understand that the offer is accepted, and the right to compensation arises from the parties having placed themselves in the relative position of employer and employee by assuming respectively the rights, obligations and duties incident thereto⁵⁷. The payments made to laborers under a contract wherein one party reserves the right to pay the other's laborers in order to secure himself against the risk of non-performance do not make the party reserving such a right the employer of the laborers or exonerate the other party from paying them himself⁵⁸. The ambiguity in the use of the term "general superintendent" in a written contract of employment is not so great as to render the contract void⁵⁹. A contract of employment, where an employee agrees to release the employer from all liability for damages received by him while in his employ in consideration of the employer's promise to re-employ him so long as his services should be satisfactory, is binding and the promises are mutual⁶⁰. The use of

56. Hamilton on General Business Corporations. See cases cited: *Cicotte v. St. Anne's Church*, 60 Mich. 552; *Eureka Iron & Steel Co. v. Bresnahan*, 60 Mich. 332; *McCracken v. Halsey Fire Engine Co.*, 57 Mich. 361; *McGannon v. Fire Ins. Co.*, 127 Mich. 636.

57. *McDonald v. Boeing*, 43 Mich. 394.

58. *Dyer v. Tyler*, 49 Mich. 366.

59. *Schraub v. Arc Welding Co.*, 123 Mich. 487.

60. *Sax v. Detroit, Grand Haven & Milwaukee R. R. Co.*, 125 Mich. 252.

the word "salary," in negotiations for employment, as implying a year's compensation, cannot be said in itself to fix the time of employment at a year rather than a term of years⁶¹. In an action upon a contract of employment as a salesman at an annual salary of eight hundred dollars upon an estimate of fifteen thousand dollars' worth of goods sold, it is error to charge the jury to assume without evidence that it was expected that the annual sales would reach fifteen thousand dollars, the parties themselves having practically construed the contract by making and receiving payments in the ratio of these rates of these services on the amount of actual sales⁶².

See Forms §196, §197, §198, §199.

§41. Exchange of Property Contracts.

It makes no difference whether the price is paid in cash or in goods, where property is taken at a fixed price the transfer amounts to a sale⁶³; so it is competent for parties to contract to make a present sale, with possession, of a growing crop of wheat, payment therefore to be made at a future day in oats instead of money⁶⁴. Where one has been defrauded in the exchange of lands for a patent right and other property, and after ascertaining the facts constituting the fraud makes use of the right conveyed to him by retaining and using the other property received by him as part of the consideration of his conveyance of the lands, he affirms the contract and cannot treat it as void⁶⁵. In a case where a contract for an exchange of merchandise for other property by the terms of which the undamaged goods are to be inventoried and taken at cost prices, and the damaged goods at "prices agreed upon," the contract is uncertain as to the price to be paid for the damaged goods, and cannot be enforced⁶⁶.

See Forms §200.

61. *Palmer v. Marquette & Pacific Rolling Mill Co.*, 32 Mich. 274.

62. *Alberts v. Stearns*, 50 Mich. 349.

63. *Picard v. McCormick*, 11 Mich. 68.

64. *Crapo v. Seybold*, 36 Mich. 444.

65. *Dunks v. Fuller*, 32 Mich. 242; See *Stevens v. Thompson*, 98 Mich. 9.

66. *Dayton v. Stone*, 111 Mich. 196.

§42. Guaranty Contracts.

A guaranty must be an original undertaking, founded upon a new consideration, and where the guaranty is expressed to be "for value received," without stating what was the value received, the validity of the guaranty is not affected⁶⁷. It is not necessary for the validity of a guaranty for collection that the name of the guarantee should appear in it⁶⁸. Where an agent of another for the sale of property, who has agreed not to sell for credit, except to those who are good and responsible, and to take no paper but good, first-class collectible paper, and such as he is willing to guarantee, takes paper he knows to be worthless and turns it over to his employer who is ignorant of its character, he makes himself liable as guarantor of the paper, and he is not entitled to have the paper returned to him as a condition precedent to judgment against him in such guaranty⁶⁹.

The distinction between contract of guaranty and other contracts rests largely in the application of the statute of frauds. In many cases the test whether a promise is or is not within the statute of frauds is to be found in the fact that the original debtor does not remain liable on his undertaking; if he is discharged by a new promise made on sufficient consideration, with a third party, this third party may be held on his promise; but if the original debtor remains liable and the promise of the third party is only collateral to his, it will in strictness be nothing more than a promise to answer for the other's debt⁷⁰. Neither party is bound by an absolute guaranty of payment for future purchases until it is acted upon, and until then it may be withdrawn, or delivery of goods refused even though verbally

67. *Jones v. Palmer*, 1 Doug. 379.

68. *Thomas v. Dodge*, 8 Mich. 51.

69. *Clark v. Roberts*, 26 Mich. 505.

70. *Calkins v. Chandler*, 36 Mich. 324; *Hall v. Wooden*, 36 Mich. 67.

As to need of written promises, see *Ruppe v. Edwards*, 52 Mich. 411;

Preston v. Young, 46 Mich. 103;

Bonine v. Denniston, 41 Mich. 293;

Grover v. Stewart, 40 Mich. 147;

Pratt v. Bates, 40 Mich. 39; *In re*

Toser's Estate, 40 Mich. 299; *Baker*

v. Ingersoll, 39 Mich. 158; *Barden v.*

Briscoe, 39 Mich. 354; *Welch v. Mar-*

vin, 36 Mich. 59.

promised; so it may be said that in the event of making sales in reliance on a guaranty of payment it amounts to an acceptance⁷¹.

See Forms §202, §204, §205.

§43. Joint Adventures Contracts.

A joint adventure is a contract entered into between parties whereby one of them is to enter land in the name of the others and whereby they are to advance money to pay his expenses, and on the repayment of which they are to deed him a proportion of the land, and the parties do not stand in the relation of principal and agent, master and servant, or vendor and vendee⁷². A contract, by which it is agreed to change a heading mill into a stave mill, and carry on the business of manufacturing staves, is not void for indefiniteness in that it fails to specify the kind of machinery to be bought or the kind of staves to be manufactured⁷³.

§44. Insurance Contracts.

An insurance contract is an agreement by which one party, for a consideration, promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest. It is a contract of mutual promises whereby the promise of the insurer to indemnify the insured is the consideration for the agreement of the insured⁷⁴. A contract of insurance is personal, and not real nor does it pass with the title to the property insured⁷⁵, and as far as the public are concerned it stands upon no different basis than other contracts⁷⁶. Act No. 277, Public Acts 1905 provides a standard fire-insurance policy, and the sixth exception therein, providing that provisions adding to or modifying the provisions of the standard form

71. *Chittenden v. Fiske*, 46 Mich. 70, 41 Am. St. Rep. 146.

72. *McCreary v. Green*, 38 Mich. 172.

73. *Adleton v. Williams*, 139 Mich. 296.

74. *King v. Concordia Fire Ins.*

Co., 140 Mich. 258.

75. *Clay Fire & Marine Ins. Co. v. Huron Salt & Mfg. Co.*, 31 Mich. 246; *Disbrow v. Jones*, Har. 48.

76. *Armstrong v. Western Mfrs. Mut. Ins. Co.*, 95 Mich. 137.

may be embodied in riders, cannot be construed literally, so as to permit the standard form to be used as a mere frame upon which to affix riders embodying the contract of the parties; and a statute prohibiting co-insurance clauses in fire-insurance policies is not invalid on the ground that it imposes an unconstitutional limitation upon the right to make contracts, since the power, which is not denied, to make a standard form of policy for use in the state involves the power to make all the terms of the policy⁷⁷.

See Forms §206.

§45. Land Contract.

At common law a parol contract for the sale of land was good, but it has been made void by statute⁷⁸. All land contracts must be in writing. It is however not essential to satisfy the requirements of the statute that they be stated⁷⁹. A court of equity will distinguish between a transaction which in form is a contract of sale of land, but in substance a mortgage⁸⁰. A contract of sale embracing within the lands sold the homestead of the vendor and not bearing the signature of his wife is only void as to the homestead⁸¹. Every transfer of land for an equivalent is practically a sale, and money's worth is as much a valuable consideration as money⁸². A consideration may be the sale of equitable interest⁸³. A contract to purchase lands is not void for want of consideration where the vendor, who, though having no ownership, yet in good faith asserts a claim thereto, such that the proposed purchaser, with full knowledge of the extent and validity of such claim is willing to buy⁸⁴. Certainty is one of the essential elements of contracts for the

77. Atty. Gen. v. Com'r of Ins., 148 Mich. 566.

78. Ellis v. Maxon, 19 Mich. 186.

79. Haneman v. Hannin, 21 Mich. 374; Enos v. Sutherland, 11 Mich. 538. As to execution, attesting and recording, see C. L. '97, §§9035-9039.

80. Cornell v. Hall, 22 Mich. 377.

81. Diekiman v. Arnold, 78 Mich. 455.

82. Huff v. Hall, 56 Mich. 456.

83. Miner v. O'Harrow, 60 Mich. 90.

84. Sheldon v. Rice's Estate, 30 Mich. 296, 18 Am. Rep. 136.

sale of land, for a contract of land cannot be enforced by the vendor where it names no party to whom the conveyance can be made and does not determine when the payments are to be made, or that the property is to be taken subject to a mortgage which was to be considered a part of the purchase-price⁸⁵. Offer and acceptance are essential to this class of contracts and the acceptance must be completed before notice of withdrawal in order to make the contract binding⁸⁶. A written offer to sell land may be accepted by a letter sent through the mail; in other words, an acceptance by mail to a written offer is sufficient⁸⁷. A description by name is sufficient in a contract for the sale of land⁸⁸. Where a contract for the sale of land is executed in duplicate, each duplicate is to be treated as an original; and where the parties intend so to execute a contract, it seems that the contract is not complete and duly executed until duplicates at least substantially alike are executed and delivered⁸⁹. In a case where a land contract is, as to one vendor, executed without authority, a subsequent approval indorsed by him upon the duplicate retained by the vendors does not validate the contract unless there is some distinct act of ratification on his part that establishes a mutuality of obligation between himself and the vendee⁹⁰. A written contract to sell land at a certain price, signed by the owner, and on a day subsequent to the date of the contract the purchaser indorsed in the absence of the vendor an acceptance and promise to pay the balance of the consideration within the time limited, constitutes a valid contract⁹¹.

See Forms §§238 to 245.

§46. Loans and Advance Contracts.

Where A was elected manager of a corporation, and given a mortgage on the corporate property to secure advances to

85. *Shipman v. Campbell*, 79 Mich.

82.

86. *Dunn v. Dunn*, 132 Mich. 461.

87. *Wilcox v. Cline*, 70 Mich. 517.

88. *Garvey v. Parkhurst*, 127 Mich. 368.

89. *Crane v. Partland*, 9 Mich. 493.

90. *Dickinson v. Wright*, 56 Mich.

43.

91. *Goldberg v. Drake*, 145 Mich.

50. See *Solomon Mier Co. v. Hadden*, 148 Mich. 488.

be made by him under an agreement "that he will furnish money for the prosecution of the business of said company, and for paying up the outstanding accounts of said company, which are now due, less stockholders' notes, which are to run one year, and shall not exceed \$15,000," it is not required by A to pay stockholders' notes from the amount advanced by him⁹².

§47. Manufacturing Contracts.

The contracts which have been submitted for adjudication under this heading relate mainly to the manufacturing of lumber and they involve questions of construction only, so that a reference to the cases⁹³ will suffice for all practical purposes. Express stipulations in a contract as to the quality of material and labor are not subject to be overcome by implications arising out of the purposes for which they are to be used⁹⁴. The delivery of property, manufactured in pursuance of a contract for construction and sale, is a sufficient consideration for an agreement on the part of the person so accepting its delivery, to waive any claims for damages on account of the contract not having been fulfilled within the stipulated time⁹⁵.

See Forms §§209 to 214.

§48. Municipal Corporation Contracts.

A municipal corporation has no general authority to exchange promises with other corporations or persons. Its contract in order to be valid must be within the scope of the authority conferred upon it by law, and for municipal purposes⁹⁶. A municipality cannot contract to aid a private venture⁹⁷.

See Forms §223, §224.

92. Fairbairn v. Houghten, 139 Mich. 72.

93. Sample v. Pickard, 74 Mich. 416; Burch v. Woodworth, 68 Mich. 519; Hersey v. Huron Salt & Lumber Mfg. Co., 27 Mich. 400; Phillips v. Raymond, 17 Mich. 287.

94. Clark v. Detroit Locomotive Works, 35 Mich. 82.

95. Moore v. Detroit Locomotive Works, 14 Mich. 266.

96. Thomas v. City of Port Huron, 27 Mich. 320.

97. Village of Morrice v. Sutton, 139 Mich. 643.

§49. Option Contracts.

Option contracts are subject to the rules governing offer and acceptance. Where A by letter asked B for a six months' option for the purchase of real property and B answered by letter giving A an option for that time at a specified sum, and where A accepted and notified B that he was ready to take the deed, but upon B's arrival with the deed A asked for ten days time in which to get the money, and where by arrangement the deed was left in escrow, to be delivered upon the payment of the money, and no further steps were taken until the last day provided by the original offer, the option was superseded by the subsequent agreement⁹⁸. An acceptance of an option in which the vendee added the clause, "I hereby agree to the above terms *and to pay the balance, or the sum of three thousand nine hundred and seventy-five dollars, within ten days,*" is a valid and binding agreement⁹⁹, and this in face of the fact that the acceptance was signed by the purchaser on a day subsequent to the date of the option, and not in the presence of the vendor¹⁰⁰. The fact that an option was not witnessed did not preclude the grantee from maintaining specific performance¹⁰¹. Where a party under a contract for the sale of the timber on a parcel of land, separately, at a specified price, and where under the same contract he has the refusal of the land for a given time, at a specified price, takes possession and exercises ownership over the land, beyond his rights relating to the timber, this conduct operates that he has irrevocably elected to take the land and amounts to an acceptance¹⁰².

See Forms §225, §226, §227.

§50. Partnership Contracts.

The most precise definition of partnership was given by Chancellor Kent and is as follows: "Partnership is a contract of

98. *Cleaves v. Walsh*, 125 Mich. 50.

99. *Goldberg v. Drake*, 145 Mich. 50.

100. *Goldberg v. Drake*, 145 Mich. 50.

101. *Solomon Mier Co. v. Hadden*, 148 Mich. 488, 118 Am. St. Rep. 586.

102. *Curran v. Rogers*, 35 Mich. 221.

two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions¹⁰³. It is essential that in order to create a partnership an offer made by one party must be accepted by the other in accordance with its terms¹⁰⁴.

See Forms §229, §230.

§51. Party Wall Contracts.

A party wall is a wall built upon the dividing line between two adjoining properties, usually having half of its thickness on each property¹⁰⁵. In the absence of statutory regulation it is customary for the adjoining owners to enter into an agreement whereby each is to build one half of the wall on their respective properties¹⁰⁶.

See Forms §231, §232.

§52. Principal and Agent Contracts.

Agency is founded upon a contractual relation between two parties, one called the principal, the other, the agent. The contract may be express or implied, by which the principal confides to the agent the management of some business to be conducted or transacted in his name, or on his account, and by which the other assumes to do the business, and to render an account of it. The authority creating the relationship may be in writing or in parol, and for ordinary purposes of business and commerce the latter is sufficient. Under the statute of frauds certain contracts must be in writing and signed by the party charged or his authorized agent¹⁰⁷. Under the contract given in the opinion, the court decided that the charge as specified was erroneous, and that independent of any question of

103. Kent's Commentaries III, 20. See *Vail v. Winterstein*, 94 Mich. 230, 34 Am. St. Rep. 334, 18 L. R. A. 515; *Artman v. Ferguson*, 73 Mich. 146, 16 Am. St. Rep. 572, 2 L. R. A. 343.

104. *Farrow v. Brester*, 108 Mich. 564.

105. *Scott v. Baird*, 145 Mich. 116.

106. *Scott v. Baird*, 145 Mich. 116.

107. C. L. '97, §9515, vide Chapter III.

fraud, the contract did not have the effect to vest the title of the goods in the agent, purchased and placed in the store by the principal¹⁰⁸.

See Forms §233, §234.

§53. Principal and Surety Contracts.

A surety is a person who, being liable to pay a debt or perform an obligation, is entitled, if it is enforced against him, to be indemnified by some other person, who ought himself to have made payment or performed, before the surety was compelled to do so¹⁰⁹. In order to make the surety contract binding it is necessary that one who consents to become surety for a party in a legal proceeding must see to it that he acts upon the request of the party himself, or his attorney or agent duly authorized to represent him in that particular¹¹⁰.

See Forms §235.

§54. Riparian Contracts.

Riparian agreements entered into between joint riparian owners, after making conveyance, cannot affect a grantee's rights, and deeds made in pursuance of such agreements would be in fraud of these rights if not made to the grantee, or to those claiming under him, but private agreements between joint owners, whereby they apportion among themselves the submarine rights in front of their premises cannot without giving notice of these agreements, diminish the riparian rights of their grantees¹¹¹.

See Forms §247.

§55. Sale Contracts.

A sale as defined by Chancellor Kent is a contract for the transfer of property from one person to another, for a valuable

108. Snook v. Davis, 6 Mich. 156.
As to employment contracts, see
Holmes v. McAllister, 123 Mich. 493,
48 L. R. A. 396; Kensel v. Mass, 101
Mich. 443; Marquette v. O. R. Co. v.
Taft, 28 Mich 289.

109. Smith v. Sheldon, 35 Mich.

42, 24 Am. Rep. 529.

110. Mitchell v. Chambers, 43
Mich. 150, 38 Am. Rep. 167.

111. Fletcher v. Thunder Bay
River Boom Co., 51 Mich. 277. See
Turner v. Holland, 65 Mich. 463;
Richardson v. Prentiss, 48 Mich. 88.

consideration, and three things are requisite to its validity, viz: the thing sold, which is the object of the sale, the price, and the consent of the contracting parties¹¹². Where the minds of the parties to a proposed contract for the sale of machinery negotiated by correspondence never met as to the time and terms of payment of the purchase price, the contract is invalid for essential elements are missing¹¹³, and a contract which specifies no time for the payment of the purchase price, will be construed as contemplating payment on delivery¹¹⁴. There is no sale where the parties do not agree as to the time of payment for a sale of goods, and no delivery of the property is made¹¹⁵. Contracts of sale are a class by themselves. They generally must be distinguished¹¹⁶ from bailments¹¹⁷ from contracts of hiring¹¹⁸, from pledges¹¹⁹, from agency¹²⁰, from contract for consignment sales¹²¹. An order upon a dealer contained a printed agreement binding the buyer to pay a certain sum in the form of notes. After it was given, but before the merchandise was delivered, the buyer requested, and the dealer allowed, the addition of these words: "It is understood that no notes are to be given on this sale, but a simple Michigan mortgage." The former clause was left standing. It was decided that the latter

112. Kent's Commentaries II, 640.

113. Wilkins Mfg. Co. v. Lumber Co., 94 Mich. 158.

114. Lamont v. LeFevre, 96 Mich. 175.

115. Foster v. Lumberman's Min. Co., 68 Mich. 188. See Jones v. Muir, 33 Mich. 223.

116. Murphy v. Charlton, 148 Mich. 141; Pinch v. Willard, 108 Mich. 204; Dathe v. Clark, 106 Mich. 262; Buhl Iron Works v. Teuton, 67 Mich. 623; Warner v. Beebe, 47 Mich. 435; Cooper v. Brock, 41 Mich. 488; Crapo v. Seybold, 36 Mich. 444; Pickard v. McCormick, 11 Mich. 68.

117. Jones v. Kemp, 49 Mich. 9;

Ledyard v. Hibbard, 48 Mich. 421, 42 Am. Rep. 474; Erwin v. Clark, 13 Mich. 10.

118. Powell v. Eckler, 96 Mich. 538.

119. Berry v. Munroe, 57 Mich. 187.

120. Snook v. Davis, 6 Mich. 156; DeKruif v. Flieman, 130 Mich. 12; Henry Bill Pub. Co. v. Durgin, 101 Mich. 458; Aspin Wall Mfg. Co. v. Johnson, 97 Mich. 531; Blogett v. Hovey, 91 Mich. 571; Hatch v. McBrien, 83 Mich. 159; Granite Roofing Co. v. Casier, 82 Mich. 466; Adriance v. Rutherford, 57 Mich. 170.

121. People v. Newman, 99 Mich. 148.

destroyed its force, and left the dealer to rely on the mortgage security alone, and that the buyer was not personally liable¹²².

See Forms §§248 to 260.

§56. Subscription Contracts.

It is well established that a mutual subscription may be supported even though no payee be named provided the object is made definite and certain, and the mutual promises of the subscribers constitute the necessary consideration¹²³.

See Forms §262.

§57. Telegraph and Telephone Contracts.

The general rule is that the sender is bound by the rules and regulations under which the company transmits messages only so far as they are brought to his knowledge¹²⁴. A condition printed on the back of a telegraph message, that limits the liability of the company in that it shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeatd message is valid¹²⁵.

See Forms §265.

§58. Trade and Business Contracts.

The contracts which have been submitted for adjudication under this heading involve questions of construction so a reference to the cases¹²⁶ will suffice for all practical purposes.

See Forms §266, §267.

§59. Trust Contracts.

A monopoly as defined by Blackstone is a license or privilege

122. Russell v. Bondie, 51 Mich. 76.

123. The First Universal Church v. Pungs, 126 Mich. 670; Allen v. Duffie, 43 Mich. 1; Comstock v. Hewd, 15 Mich. 237; Underwood v. Waldron, 12 Mich. 73.

124. Carland v. Western Union Telegraph Co., 118 Mich. 369, 43 L. R. A. 280, 71 Am. St. Rep. 394; Jacob v. Western Union Tel. Co., 135

Mich. 600.

125. Birkett v. Western Union Tel. Co., 113 Mich. 361, 33 L. R. A. 404; 50 Am. St. Rep. 283. See Western Union Tel. Co. v. Carew, 15 Mich. 525.

126. Geiger v. Cawley, 146 Mich. 550; Union Trust Co. v. Michigan Electric Co., 140 Mich. 131; Doty v. Martin, 32 Mich. 462; Beal v. Chase, 31 Mich. 490.

allowed by the King for the sole purpose of buying and selling, making, working or using anything whatsoever, whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before¹²⁷. In a modern sense it embraces any combination which tends to stifle and prevent competition by controlling the prices of commodities to the injury of the public. On the one hand it creates and establishes an exclusive right or privilege, while on the other it restricts or restrains the general right. Combinations are a form of monopoly whereby the price of merchandise, provisions or workmanship is kept up. They are legal and illegal. Legal combinations are such that are neither against law or public policy, while illegal combinations are such that are contrary to law and public policy.

A trust is another form of monopoly and may be defined as a combination of many competing concerns under one management, which thereby reduces the cost, regulates the amount of production, and increases the price for which the article is sold¹²⁸. It is either a monopoly or an endeavor to establish one. Its purpose is to make larger profits by decreasing cost, limiting production and increasing the price to the consumer¹²⁹. A trust, as defined by statute¹³⁰, is a combination of capital, skill or arts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.
2. To limit or reduce the production, or increase or reduce the price of merchandise or any commodity.
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or commodity.
4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner questioned or established, any article or commodity of merchandise, produce or

127. Blackstone, IV, 158.

128. Cook Trusts, 4.

129. Cook Trusts, 4.

130. Public Acts '99, Act 255.

commerce intended for sale, barter, use or consumption in this state.

Certain contracts, agreements, understandings and combinations are declared unlawful by statute¹³¹. It is manifest that the unlawful conduct of complainant, a coal dealer, in conjunction with other coal dealers entering into a combination, in violation of the statute¹³² to enhance, regulate and control the price of coal in the market, will not excuse the unauthorized action of the adverse party, the city, in engaging in the coal business, but bears upon the question whether the complainant comes into a court of chancery with clean hands¹³³. Where all the evidence was inconsistent with a legitimate sale, except the demands of the plaintiff's president, which were qualified by the facts admitted and where proof should have been admitted to show plaintiff's knowledge and participation in an illegal transaction, surrounding a contract, although not illegal on its face, a verdict for the defendant should not have been directed, upon the ground of plaintiff's complicity in an illegal and penal transaction¹³⁴. An agreement entered into between two manufacturers where one in consideration of a certain amount agreed to cease manufacturing certain articles for one year, with a renewal privilege of four years more, was void as against public policy¹³⁵. A contract to sell lambs wherein the buyer agrees not to buy any other lambs in certain counties prior to the date fixed for delivery, is void under C. L. '97, §11377, declaring void all contracts designed in any manner to prevent or restrict free competition in the production or sale of any agricultural article or commodity¹³⁶.

See Forms §268, §269.

131. C. L. '97, §§11377-11383, Public Acts '05, Nos. 229, 329.

132. C. L. '98, §§11377-11379.

133. Baker v. City of Grand Rapids, 142 Mich. 687.

134. Detroit Salt Co. v. National Salt Co., 134 Mich. 103.

135. Clark v. Needham, 125 Mich.

84. See Western Woodenware Ass'n v. Starkey, 84 Mich. 76; Richardson v. Buhl, 77 Mich. 632. In case of employe agreeing not to engage in business: See Grand Union Tea Company v. Lewitsky, 153 Mich. 245, 136. Benjamin v. Brands, 119 Mich. 255.

CHAPTER V.

OFFER AND ACCEPTANCE.

- §60. Parties, Mutuality, Assent, Offer and Acceptance.
- §61. Invitation to Negotiate Distinguished from Offer.
- §62. Offer Capable of Creating Legal Relations.
- §63. The Offer Must be Definite. Statute of Frauds.
- §64. Communication of Offer in Some Cases.
- §65. Continuing Offer.
- §66. Revocation and Withdrawal.
- §67. Express Revocation.
- §68. Implied Revocation.
- §69. Irrevocable Offer.
- §70. Rejection of Offer.
- §71. Lapse of Offer.
- §72. Form of Offer.
- §73. Intention to Accept.
- §74. Manner of Communicating Acceptance.
- §75. Acceptance Must Correspond to Offer.
- §76. Acceptance Varying or Modifying Offer.
- §77. Validity of Acceptance when Parties Differ as to Terms in Attempting to Reduce Contract to Writing.
- §78. Emphasis Placed on Certain Terms in Acceptance.
- §79. Acceptance by Mail or Telegraph.
- §80. Acceptance Concerning Absolute Guaranty.
- §81. Acceptance of Order Given to Agent.
- §82. The Acceptance of a Rejection of an Offer by one Joint Vendor.
- §83. Necessity of Distinguishing Between Offer and Acceptance.
- §84. Offer and Acceptance as to Evidence.
- §85. Offer and Acceptance as to Implied Agreements.
- §86. Offer, Acceptance and Subject-Matter.
- §87. Offer and Acceptance in Relation to Consideration

§60. Parties, Mutuality, Assent, Offer and Acceptance.

Every person or party of legal capacity¹ who is desirous or seeks to enter into or bring about a contractual relation², to sustain which there must be mutuality of will³, of intention⁴, and

1. Van Buren Division of Toledo & S. H. R. Co. v. Lamphear, 54 Mich. 575.

2. Woods v. Ayres, 39 Mich. 345.

3. Woods v. Ayres, 39 Mich. 345; Pierce v. Pierce, 55 Mich. 629; Finley Shoe and Leather Co. v. Kurtz, 34 Mich. 89; Carney v. Ionia Transpor-

tation Co., 157 Mich. 54. In this case a question of fact is raised for the jury to determine as to the meeting of minds and the mutual binding effect of the conversations.

4. Michigan College of Medicine v. Charlesworth, 54 Mich. 522.

assent⁵ upon such consideration⁶, rights and duties as courts of justice recognize⁷, makes a proposal or offer of an act for a promise⁸, or a promise for an act⁹, or a promise for a promise¹⁰, which must be communicated¹¹, and may be expressed either in spoken or written words¹² or inferred and implied from the conduct of the offerer¹³, and the legally competent offeree, or offerees, when the proposal or offer is general¹⁴, or otherwise, complies with the offer precisely and definitely as made, provided it has not been withdrawn or revoked¹⁵, by accepting it¹⁶, and which acceptance is irrevocable¹⁷ and must be communicated¹⁸ and may be expressed either in spoken or written words¹⁹, or inferred and implied from the conduct of the offeree²⁰, and, in some instances, it is essential that the acceptance is acted upon in order to make the otherwise valid contract binding²¹. It is apparent then that an offer must be communicated, must intend to create legal relations, must not necessarily be directed to a particular person, but can be revoked any time before acceptance, and acceptance must be communicated, must be absolute and identical with the terms of the offer, and irrevocable. Offer and acceptance—a primary and a secondary act are essential to the formation and creation of contract. In other words, every contract resolves itself into an offer and acceptance.

5. *Woods v. Ayres*, 39 Mich. 345, 33 Am. Rep. 396; *Bronson v. Herbert*, 95 Mich. 478; *Wagner v. Eggleston*, 49 Mich. 218; *Kalamazoo Novelty Mfg. Works v. Macalister*, 40 Mich. 84; *Weiden v. Woodruff*, 38 Mich. 130.

6. *Rood v. Jones*, 1 Dougl. 188.

7. *Woods v. Ayres*, 39 Mich. 345, 33 Am. Rep. 396.

8. *White v. Taylor*, 113 Mich. 543.

9. *Up River Ice Co. v. Denler*, 114 Mich. 296.

10. *Durgin v. Smith*, 115 Mich. 239.

11. *Thornton v. Village of Sturgis*, 38 Mich. 639.

12. *Sturgis v. Robbins*, 7 Mass. 301.

13. *Reif v. Paige*, 55 Wis. 503.

14. *Spencer v. Harding*, L. R. 5 C. P. 511.

15. *Weiden v. Woodruff*, 38 Mich. 130.

16. *Weiden v. Woodruff*, 38 Mich. 130.

17. *Wilcox v. Cline*, 70 Mich. 517.

18. *Thornton v. Village of Sturgis*, 38 Mich. 639.

19. *Long v. Battle Creek*, 39 Mich. 323, 33 Am. Rep. 584.

20. *White v. Corlies*, 46 N. Y. 467.

21. *Cooper v. Lansing Wheel Co.*, 94 Mich. 272.

§61. Invitation to Negotiate Distinguished From Offer.

Invitations to negotiation are usually embodied in advertisements, circulars, hand bills, posters and the like. Thus, where a party sent out a circular letter, stating that, "We are authorized to offer Michigan fine salt, in full car lots of 80 to 95 bbls., delivered at your city at 85 c. per bbl. * * * shall be pleased to receive your order,"—and the plaintiff at once replied ordering 2000 bbls., but which order was refused, the court decided that the letter was a simple notice and an invitation to opening negotiations²². In another case, somewhat different in its nature, where the plaintiff wrote the following letter:

"Owosso, Mich., Dec. 16, 1889.

Messrs. Lansing Wheel Co.,
Lansing, Mich.

Gentlemen: Please enter our order for what wheels we may want during the season of 1890, at following prices and terms: B \$6.00; C \$5.00; D \$4.00, per set, f. o. b. Owosso, 30 days. All the wheels to be good stock, and smooth. Should we want a few D wheels to be extra nice stock, all selected white, they are to be furnished at same price, not to exceed 10 set in a 100.

Very respectfully yours,

Owosso Cart Co."

The defendant endorsed across this letter the following: "Accepted. Lansing Wheel Co." Although these writings constitute a valid contract, the court decided that the contract had to be acted upon in order to make it binding²³. The distinguishing feature between offer and invitation to negotiate rests in the fact that no legal relations are contemplated, so where an offer has been made in jest or as a joke, no legal relations are intended and therefore no legal offer exists²⁴. Although the invitations are often merely expressions of a willingness to negotiate, yet

22. *Moulton v. Kershaw*, 59 Wis. 316. 94 Mich. 272.

23. *Cooper v. Lansing Wheel Co.*, 248. 24. *Keller v. Holderman*, 11 Mich. 248.

the form in which they are cast may be of a nature so as to become contract²⁵.

§62. Offer Capable of Creating Legal Relations.

An offer intending to create legal relations must be necessarily complete in that it contains all the terms requisite upon acceptance to form a contract²⁶. The terms must be certain, yet where a party reserves the right to avail himself to offer another proposition as to price or in other words, he reserves the right to abandon the contract under certain conditions, the contract is nevertheless binding²⁷. Where the offer upon its face looked to future negotiations between the parties to determine and agree upon the valuation of certain property, the offer did constitute a complete contract, for this part of the offer was an essential part of the terms and conditions of the contract²⁸. Neither is a contract complete where the terms of payment and security for the purchase are left to be determined by future negotiations²⁹. Although the compensation has not been fixed by the terms of the contract, nor by a fair construction of the contract can one be ascertained, yet the contract may be enforced for a reasonable compensation. Thus, where services are rendered at the express request of a party and where nothing is said about payment or who is to be charged, the party who gave the order and whose legal duty it is to pay must pay for such services³⁰, so are the terms sufficiently definite where a promise is made that if a creditor will delay collecting his debts until after the death of the debtor he will be well paid for his waiting³¹.

25. *Ahearn v. Ayres*, 38 Mich. 692; *Peek v. Novelty Works*, 29 Mich. 313.

26. *Wardell v. Williams*, 62 Mich. 39, 4 Am. St. Rep. 814.

27. *Lanford v. Wooden Ware Co.*, 127 Mich. 614. See *Bollenbacker v. Reid*, 155 Mich. 277.

28. *Wardell v. Williams*, 62 Mich. 39, 4 Am. St. Rep. 814.

29. *Sands, etc., Co. v. Crosby*, 74 Mich. 313.

30. *Sears v. Giddey*, 41 Mich. 590, 32 Am. Rep. 168.

31. *Davis v. Teachout*, 126 Mich. 135, 86 Am. St. Rep. 531.

§63. The Offer Must be Definite. Statute of Frauds.

The offer not only must be definite, but if it comes within the statute of frauds, it must comply with the same³². Thus, where an offer was made to operate a mine "as long as it pays," it was decided to be insufficiently definite³³, so where a contract was to be terminated on 60 days' notice "for good cause," such contract was deemed ineffective because "good cause" could not be reduced to legal certainty³⁴, and where a statement is made that "there is no doubt about getting the stock" in the offer, the offer is not sufficiently definite to constitute a contract³⁵. On the other hand, an offer to pay an inventor a specified sum weekly so long as devices invented by him are used by the other party in his manufactures, is sufficiently definite³⁶, so a written proposal and acceptance whereby B was to furnish, and A to buy, all the tin cans that A might use in its canning factory for a stated period, are sufficiently definite to constitute a valid contract³⁷, and an offer to buy all the ice necessary to carry on B's business in a certain locality for a period of five years from date, at a specified price per ton, is not void for want of definiteness³⁸.

§64. Communication of Offer in Some Cases.

There are certain cases in which the communication of certain terms of the offer rests with the offeree to ascertain the conditions of the contract from certain papers he receives in the particular transaction, such as receipts, tickets, bills of lading, etc. Thus, where a consignor has received a bill of lading, which contains limitations upon the carrier's liability, without making any objections thereto, and has not in any way been imposed upon or misled, he cannot defeat these limitations by showing that he

32. *Wardell v. Williams*, 62 Mich. 39, 4 Am. St. Rep. 814.

33. *Davie v. Mining Co.*, 93 Mich. 491, 24 L. R. A. 357.

34. *Cummer v. Butts*, 40 Mich. 322, 29 Am. Rep. 530.

35. *Topliff v. McKendrie*, 88 Mich. 148.

36. *Raymond v. White*, 119 Mich. 438.

37. *E. C. Dailey Co. v. Can Co.*, 128 Mich. 591.

38. *Hickey v. O'Brien*, 123 Mich. 611, 81 Am. St. Rep. 227, 49 L. R. A. 394.

received the bill of lading without reading it, or being aware that it contained them³⁹. It is only when an offer or proposal of an unusual kind and extraordinary character is made by the shipping agent of the common carrier, that the shipper is put upon inquiry as to the agent's authority⁴⁰.

§65. Continuing Offer.

An optional offer is in the nature of a continuing offer. Thus, where an option is accepted before it is revoked, a binding contract on the part of both parties is created⁴¹, but a statement "would not sell for less than \$154 net at this time" is not in the nature of a continuous offer⁴².

§66. Revocation and Withdrawal.

An offer can be revoked or withdrawn any time before acceptance⁴³. Thus, an offer to sell and deliver goods is subject to revocation at any time before acceptance⁴⁴. The time of revocation takes place from the moment of its receipt⁴⁵, while acceptance takes place from the moment of mailing it.

§67. Express Revocation.

The general rule is that when an offer is withdrawn or cancelled before any of the goods are delivered, a subsequent acceptance under the first order will not make a binding contract⁴⁶.

§68. Implied Revocation.

It may be said that where an offer is made, the acts of the offerer subsequently may be of such a nature as to be inconsistent

39. *McMillan v. R. R. Co.*, 16 Mich. 79, 93 Am. Dec. 208; *Smith v. American Express Co.*, 108 Mich. 572.

40. *Rudell v. Ogdensburg Transit Co.*, 117 Mich. 568.

41. *Wardell v. Williams*, 62 Mich. 39, 4 Am. St. Rep. 814.

42. *Sprague v. Hosie*, 155 Mich. 30.

43. *Weiden v. Woodruff*, 38 Mich. 130; *Cooper v. Lansing Wheel Co.*, 94 Mich. 272, 34 Am. St. Rep. 341.

44. *Smith v. Brennan*, 62 Mich. 349, 4 Am. St. Rep. 867.

45. *Weiden v. Woodruff*, 38 Mich. 130.

46. *Brown v. Snider*, 126 Mich. 198; *MacCormick Harvesting Machine Co. v. Cusack*, 116 Mich. 647.

with the continuance of the offer, so that the acts may amount to an implied withdrawal, provided they are brought to the knowledge of the offeree⁴⁷.

§69. Irrevocable Offer.

Any offer may be withdrawn at any time before acceptance and even where an offer sets a specified time for acceptance; although the acceptance is manifested but not acted upon, the offer can be withdrawn⁴⁸.

In order to make the offer irrevocable the acceptance must be acted upon⁴⁹.

§70. Rejection of Offer.

The rejection of an offer puts a finality to its legal force and it thereby loses its contract value⁵⁰.

§71. Lapse of Offer.

An offer lapses by time. If no time is fixed it will lapse within a reasonable time if unaccepted, and no formal withdrawal is necessary⁵¹.

§72. Form of Offer.

The offer may be made either by words or by acts⁵² and it makes no difference in what form it is made, whether as a simple proposal by letter⁵³ or by telegraph⁵⁴ or by advertisements⁵⁵ or by other writings⁵⁶ or as a mere formal contract. It is not a

47. Wardell v. Williams, 62 Mich. 50, 4 Am. St. Rep. 814.

48. Cooper v. Wheel Co., 94 Mich. 272, 34 Am. St. Rep. 341.

49. Gustin v. School District, 94 Mich. 502, 34 Am. St. Rep. 361.

50. Eggleston v. Wagner, 46 Mich. 610.

51. Bowen v. McCarthy, 85 Mich. 26; Cleaves v. Walsh, 125 Mich. 638; Johnson v. Stephenson, 26 Mich. 63.

52. Stevens v. Muskegon, 11 Mich. 72, 36 L. R. A. 777.

53. Francis v. Barry, 69 Mich. 311; Topliff v. McKendrie, 88 Mich. 148.

54. Van Valkenburg v. Rogers, 18 Mich. 180.

55. Peek v. Detroit Novelty Works, 29 Mich. 313.

56. Francis v. Barry, 69 Mich. 311.

contract until the one to whom it is made accepts it, for an unaccepted offer can never be a contract⁵⁷.

§73. Intention to Accept.

An essential element of a valid acceptance lies in the intention to do so⁵⁸. Thus, where one fails to reject an offer or allows it to go by default, no acceptance can be inferred from such circumstances⁵⁹.

§74. Manner of Communicating Acceptance.

Where the offer or proposal is clear and explicit, the acceptance or assent may be communicated by word of mouth or by writing or it may be shown by conduct which may indicate the intent as clearly as words⁶⁰. Thus, where a private citizen made an oral proposition or offer to a city council to the effect that "if the city would build one-half of a good bridge across the river, he would build the other half," or "if the city would build the entire bridge he would pay for half of it;" the offer becomes binding on him as soon as the city builds the bridge⁶¹. Where an offer includes qualifying conditions, the acceptance of the offer is an assent to the conditions⁶².

§75. Acceptance Must Correspond to Offer.

The acceptance must be complete and coincide with the offer, nothing must be left open for future negotiations⁶³, but under certain conditions an acceptance need not bind acceptor to take

57. *Seaton v. Pere Marquette Boom Co.*, 84 Mich. 178; *Board of Trade of Grand Haven v. De Bruyn*, 138 Mich. 187.

58. *Holmes v. Holmes*, 129 Mich. 412.

59. *Fuller & Rice Lumber & Mfg. Co. v. Houseman*, 114 Mich. 275; *Harris v. Smith*, 79 Mich. 54.

60. *Wilkins Mfg. Co. v. Lumber Co.*, 94 Mich. 164.

61. *Long v. Battle Creek*, 39 Mich. 323, 33 Am. Rep. 584.

62. *McMillan v. Michigan Southern, etc. R. Co.*, 16 Mich. 78, 9 Am. Dec. 208.

63. *De Junge v. Hunt*, 103 Mich. 94; *Wilkin Mfg. Co. v. H. M. Loud, etc., Lumber Co.*, 94 Mich. 158; *Sands, etc., Lumber Co. v. Crosby*, 74 Mich. 313; *Whiteford v. Hitchcock*, 74 Mich. 208; *Eggleston v. Wagner*, 40 Mich. 610; *Johnson v. Stephenson*, 26 Mich. 63; *Van Falkenburg v. Rogers*, 18 Mich. 180.

all the goods offered⁶⁴. Thus, where a letter of acceptance does not answer the letter containing the offer, a valid contract does not ensue⁶⁵.

§76. Acceptance Varying or Modifying Offer.

An acceptance which varies or modifies the offer has no legal effect whatever. It acts as a rejection. If it is a counter proposition, it must be accepted unqualifiedly by the party who made the original offer. Thus, where it appears from the correspondence that the terms of the offer proposed by the plaintiff or the counter proposition of the defendant were never unqualifiedly accepted by one or the other, an acceptance of the offer or counter offer never took place and no contract was formed⁶⁶. Again where after certain preliminary negotiations, defendant submitted to plaintiff a list of property belonging to the latter which defendant professed to be willing to take in exchange for land belonging to him, and which list showing the value of each description, the amount of supposed incumbrances, and the net value of the equity, which latter aggregated a sum slightly in excess of the value of the land which defendant proposed to exchange, and where thereupon plaintiff executed deeds of the listed property and placed them in the hands of a third person for safekeeping, but soon afterwards it developed that the total incumbrances on the property selected by the defendant and described in the deeds were greater by several thousand dollars than appeared in the list made by defendant, no acceptance was manifested and that, in face of the fact that the deeds executed by plaintiff purported to be subject only to such incumbrances as were named in defendant's proposition, and the plaintiff could not complete the contract by tendering deeds of lands equaling in value to the increased incumbrances without the written acceptance of such lands by the defendant⁶⁷, so there is no accept-

64. *Miller v. Tanner's Supply Co.*, 150 Mich. 292.

65. *Godkin v. Weber*, 154 Mich. 207.

66. *Wilkin, etc., Co. v. Loud Lumber Co.*, 94 Mich. 158.

67. *Connor v. Buhl*, 115 Mich. 531; *Bowen v. McCarthy*, 85 Mich. 26;

ance where the manner of delivery of a deed is varied by the terms of acceptance⁶⁸. An acceptance, varying the time and terms of payment⁶⁹ or the time of performance⁷⁰ or rebate for damages⁷¹ or quantity offered for sale or acceptance of a less amount than offered for a season's supply⁷² is invalid.

§77. Validity of Acceptance When Parties Differ as to Terms in Attempting to Reduce Contract to Writing.

It may be stated that where an agreement is carried out without being reduced to writing, although the parties in their attempt to reduce it to writing differ as to the terms, the acceptance is nevertheless valid and complete and the contract valid⁷³.

§78. Emphasis Placed on Certain Terms in Acceptance.

The statement may be made that where emphasis is placed in acceptance upon certain terms contained in the offer by construction or by implication of law, the acceptance is valid⁷⁴.

§79. Acceptance by Mail or Telegraph.

The rule is well established that in the case of the acceptance of the offer by correspondence the acceptance is complete as soon as the acceptor has done all in his power to communicate his intention⁷⁵. The acceptance of an offer to sell property being optional with the vendee, is not binding upon the vendor until accepted, but if the offer is accepted before withdrawal the contract is mutual and complete and capable of enforcement⁷⁶.

Thomas v. Greenwood, 89 Mich. 215;
Eggleston v. Wagner, 46 Mich. 610;
Donaldson v. Detroit Museum of
Art, 72 Mich. 32.

68. De Junge v. Hunt, 103 Mich.
94.

69. Wilkin, etc., Co. v. Loud
Lumber Co., 94 Mich. 158.

70. United States Heater Co. v.
Applebaum, 126 Mich. 296.

71. Griffin v. Lumber Co., 97
Mich. 557.

72. Michigan Bolt & Nut Works
v. Steel, 11 Mich. 153.

73. Peck v. Miller, 39 Mich. 504.

74. Hubbell v. Palmer, 76 Mich.
441.

75. Trevor v. Wood, 36 N. Y.
307.

76. Wilcox v. Cline, 70 Mich. 517.
No acceptance can be implied from
the acts of the recipient of a letter
wherein the plaintiff never accepted
the proposition, but instead of ac-
cepting it, he made a counter propo-
sition—a proposition the defendants
rejected. Frank v. McGilvary, 144
Mich. 318.

§80. Acceptance Concerning Absolute Guaranty.

An absolute guaranty of payment for future purchase binds neither party until it has been acted upon by making sales which amount to an acceptance of it, and until then it may be withdrawn, or delivery of goods may be refused even though verbally promised⁷⁷. It is essential that where the offer of the guarantee to sell goods to one on credit provided the payments are guaranteed and after the guaranty is signed he reserves the right of approving of the guarantors, notice of his acceptance must be given the guarantors⁷⁸.

§81. Acceptance of Order Given to Agent.

An order given to an agent must be accepted by the principal and notice given to the orderer of such acceptance before it becomes a binding contract⁷⁹, but where a traveling agent procures an order for goods, signed by the orderer, in which the prices and date of shipment are specified, supplemented by a paper signed by the agent and delivered to the orderer, acknowledging the ordering of the goods, describing them, and giving prices and time of shipment the same as in the order, a valid contract for the goods is formed⁸⁰. It may be stated that where the plaintiff's agent took an order from the defendant, subject to plaintiff's acceptance, and the order provided that it was not subject to countermand, or to any change in its conditions by verbal arrangements with agents, the order could be countermanded by the defendant at any time prior to its acceptance by the plaintiff, or to notice of plaintiff's intention to accept it⁸¹, but whatever arrangement was made thereafter by its agent with the defendant would be binding upon the plaintiff⁸².

77. Crittenden v. Fiske, 46 Mich.

70. 78. De Cremer v. Anderson, 113 Mich. 578.

79. Bronson v. Herbert, 95 Mich. 478; Weiden v. Woodruff, 38 Mich. 130; Aldine Press v. Estes, 75 Mich.

100.

80. Leo Austrian & Co. v. Springer, 94 Mich. 343.

81. Feed Mill Co. v. Kerr, 93 Mich. 328.

82. Feed Mill Co. v. Kerr, 93 Mich. 328.

§82. The Acceptance of a Rejection of an Offer by One Joint Vendor.

The acceptance of a surrender or rejection of a contract by the vendee upon the suggestion of one of the vendors of the contract, by delivering it to him, and he manifesting his willingness to accept it and release the vendee, but will be obliged to consult his co-vendor, is invalid for want of latter's consent⁸³.

§83. Necessity of Distinguishing Between Offer and Acceptance.

A contract of guaranty given by parties to a creditor to secure payment for goods sold to a debtor, subject to the creditor's approval of the guarantor's responsibility, constitutes a supplemental offer on the part of the guarantor which the creditor must accept before the contract becomes binding, or, in other words, "if the guaranty is signed by the guarantor without any previous request of the other party, and in his absence, for no consideration moving between them except future advances to be made to the principal debtor, the guaranty is, in legal effect, an offer or proposal on the part of the guarantor, needing an acceptance by the other party to complete the contract." Thus, a distinction is shown between offer and acceptance when the original transaction is contemporaneous with the guaranty, and when it is conditional⁸⁴.

§84. Offer and Acceptance as to Evidence.

It is apparent that offer and acceptance and the relation of agency, must be shown usually by the language of the parties in making the contract, and they cannot often be shown otherwise⁸⁵. The direct evidence was sufficient to establish the offer and acceptance whereby an agreement was effected between the complainant and the defendant by which the latter agreed to

83. *Grunnow v. Salter*, 118 Mich. 148.

84. *De Cremer v. Anderson*, 113 Mich. 578.

85. *Gutsch v. McIlhargey*, 69 Mich. 377; *Durgin v. Smith*, 133 Mich. 331.

sell his premises and practice to complainant⁸⁶, but where sub-contractors have no authority to pledge the credit of their contractor for the board of their men, the mere evidence of the fact of payment of a prior board bill upon the order of the sub-contractor will not establish an offer and acceptance, so as to create a liability for any subsequent bills⁸⁷.

§85. Offer and Acceptance as to Implied Agreements.

Offer and acceptance cannot be implied so as to constitute an agreement between a company and a surgeon, where the chief surgeon of a railroad company requested the surgeon who was attending an injured employe of the company for a report and itemized bill of services rendered to such employe⁸⁸, nor where a canal was dug for the purpose of floating timber, and the owner of the land who had incurred the larger share of the expense notified individuals who had contributed to its repair that they must pay for the use⁸⁹.

§86. Offer, Acceptance and Subject-Matter.

The general rule is well established that in order to convert an offer into a promise the constituents of the acceptance tendered must comply with and conform to the conditions and exigencies of the offer. The acceptance must be of that which is proposed or offered and nothing else and must be absolute and unconditional and it must include and carry with it whatever undertaking, right or interest the offer calls for, and there must be an entire agreement between the offer and acceptance as to subject-matter and extent of interest to be contracted⁹⁰. It is then apparent that if one makes an offer to another, verbal or written,

86. Doty v. Martin, 32 Mich. 462.

87. Danaher v. Garlock, 33 Mich. 295; Marsh v. Tunis' Estate, 39 Mich. 100. See other cases relative to this section as follows: Anderson Carriage Co. v. Pungs, 140 Mich. 437; Waterbury v. O'Brien, 125 Mich. 594; Smith v. Jennings, 121 Mich. 393; McLaughlin v. Austin,

104 Mich. 489; Franks v. Stevens, 82 Mich. 192; Hess v. Griggs, 43 Mich. 397.

88. Burke v. Chicago & W. M. Ry. Co., 114 Mich. 685.

89. Ward v. Wardner, 8 Mich. 508; Daniels v. Mosher, 2 Mich. 183.

90. Eggleston v. Wagner, 46 Mich. 610.

direct, by letter or by telegram, of a sort implying nothing to be done except to assent or decline, and the latter accepts it, adding no qualification, there is thus constituted a mutual assent to the same thing at the same time; in other words, a contract; but if the acceptance attaches new conditions or falls short of the terms offered, it is insufficient as an acceptance and has the legal effect of causing a rejection of the offer, thereby terminating the liability of the offerer to be bound by a subsequent acceptance conforming to the terms of the offer.

§87. Offer and Acceptance in Relation to Consideration.

As we have seen, in order to convert an offer into a promise, the constituents of the acceptance tendered must comply with and conform to the conditions and exigencies of the offer and must be absolute and conditional⁹¹, but we have found that, although offer and acceptance may be completed and a valid contract formed, yet it is subject to revocation and therefore is no binding contract until acted upon, for the reason that until that time the contract is without consideration⁹². Thus offer, acceptance and consideration may be reduced to a primary and a secondary act in either of which, consideration may be inherent.

91. *Eggleston v. Wagner*, 46 Mich. 610.

92. *Cooper v. Lansing Wheel Co.*, 94 Mich. 272.

CHAPTER VI.

CONSIDERATION.

- §88. Definition.
- §89. Distinction Between Consideration and Motive.
- §90. Classification of Consideration.
- §91. Consideration in Relation to Offer and Acceptance.
- §92. Necessity and Sufficiency of Consideration.
- §93. From, To Whom the Consideration Must Move.
- §94. The Relation of Consideration to Formal Contracts.
- §95. Consideration in Relation to Bills of Exchange and Promissory Notes.
- §96. Valuable Consideration.
- §97. Executed, Executory and Past Considerations.
- §98. Illegal Consideration.
- §99. Mutual Promises.
- §100. Adequacy of Consideration.
- §101. Consideration in Equity.
- §102. Contingent Consideration.
- §103. Conditional Promises.
- §104. Performance of Legal Obligation.
- §105. Performance of Broken Contracts.
- §106. Forbearance.
- §107. Consideration for Benefit of Third Persons.
- §108. Consideration in Relation to Bailments.
- §109. Future Considerations.
- §110. Future Advances.
- §111. Compromise of Doubtful and Unliquidated Claims.
- §112. Composition with Creditors.
- §113. Subscription Paper.
- §114. Pre-existing Obligations.
- §115. Past Consideration.
- §116. Moral Obligation.
- §117. Modification of Contract.
- §118. Unenforceable Consideration.
- §119. Failure of Consideration.
- §120. The Effect of Failure or Want of Consideration.
- §121. Consideration in Relation to Mutuality.
- §122. Consideration in Relation to Subject-Matter.
- §123. Assent in Relation to Consideration.
- §124. Types of Consideration.

§88. Definition.

Consideration is the price paid or agreed to be paid for the promise, that is, the thing done or agreed to be done¹. It is the

1. Underwood v. Waldron, 12 Mich. 73.

legal cause by which the parties are actuated to enter into the contract. It may be the motive or inducement and yet it may not be².

§89. Distinction Between Consideration and Motive.

A clear distinction sometimes exists between motive and consideration. "Nothing is consideration that is not regarded as such by both parties. It is the price voluntarily paid for a promisor's undertaking. An expectation of results often leads to the formation of contract, but neither the expectation nor the result is 'the cause or meritorious occasion requiring a mutual recompense in fact or in law.' Surely a creditor may do a favor to his debtor, or may enter into a new and independent contract with him, induced by which the debtor may assent to giving a note for the previously existing indebtedness. Without the favor of the new contract there is in such a case a full consideration for the note, and the parties may not have contemplated that the favor of the new contract was to be paid for. To regard them as entering into the consideration of the note would be to make a contract for the parties to which their minds never assented"³. There may be a motive for a promise and yet that motive may not amount to a consideration; for, where a person makes a gift for the purpose of making an equal distribution of his estate, the motive does not amount to a consideration⁴.

§90. Classification of Considerations.

As to the capability of their performance, they are possible or impossible.

As to their legality, they are legal or illegal.

As to the time of performance, they are executed or executory.

As to the medium of proof, they are express or implied.

2. Blackstone Com. 444.

3. Philpot v. Greeninger, 14 Wall.
570.

4. Conrad v. Manning, 125 Mich.
77.

§91. Consideration in Relation to Offer and Acceptance.

When the offer and acceptance result in mutual promises or when the offer is met with acceptance, yet there is something left to be done, the contracts are said to be complete, for the reason that it is the general rule that the acceptance of the offer furnishes the consideration for the promise in that consideration must be that which is contemplated by offer and acceptance, and it is apparent that offer and acceptance cannot be binding without consideration⁵. However, in the former instance no consideration is furnished until that something is done in part or in whole as the case may be⁶. The consideration for contracts, express or implied, is not to be furnished by the action of one party alone, where the other party has no control or authority to interfere with accepting or rejecting the thing offered, an acceptance under these circumstances is not binding⁷.

§92. Necessity and Sufficiency of Consideration.

The rule is fundamental that the enforceability of a simple promise or agreement must be founded on the simple promise or agreement having a sufficient consideration for its support⁸,

5. *Markillie v. Markillie*, 115 Mich. 658.

6. *Cooper v. Lansing Wheel Co.* 94 Mich. 272. In this case the court said: "If it be held, as we think the correct doctrine is, that an offer to furnish such goods as the plaintiff may want within a stated time may, upon acceptance by the offeree before withdrawal, constitute a valid contract, it is difficult to see why, if the offeree orders any portion of the goods, and the offerer has the benefit of the sale, the entire contract may not become valid and binding. This certainly would constitute a sufficient consideration." See notes 47, 48, *Vereycken v. Vanderbrooks*, 102 Mich. 109.

Where an order for merchandise was largely exceeded and the consignee receives and retains the goods, it is but a new contract and must rest on a new consideration.

Larkin v. Mitchell, 51 Mich. 296.

7. *Thornton v. Sturgis*, 38 Mich. 638.

8. *Rood v. Jones*, 1 Douglass, 188; *Decamp v. Scofield*, 75 Mich. 449. A promise to pay is not binding if made without consideration, *Feed v. Marvin*, 41 Mich. 216. The consideration of contract to which there are some exceptions on ground of public policy may be inquired into. A promise made without consideration, or where the consideration wholly failed will not be enforced. *Colman v. Post*, 10 Mich. 422. The sufficiency of the consideration for an honest bargain cannot be inquired into if there was any consideration of value which was not separable at the time into specific values. *Kennedy v. Shaw*, 43 Mich. 359. As to separate consideration: *McKay v. Evans*, 48 Mich. 597. An agreement between a *bona fide*

and it is not sufficient that the promise or agreement imports consideration, but that there is one in fact⁹. The sufficiency of the consideration of a contract cannot be contested or questioned by one who has had the full benefit of it¹⁰; but a consideration, based upon an agreement to pay that which a party has already agreed to pay, can be questioned on the ground of its insufficiency where it formed the basis for a new promise to perform the same agreement¹¹.

It is manifest in cases where the consideration is severable that, if one or more of several considerations, which are the ground of a promise, be only frivolous and insufficient, but not illegal, and others are good and sufficient, then the consideration may be severed, and those which are void disregarded, while those which are valid will sustain the promise¹². In reference to the sufficiency of the consideration the rule of law seems to be that it must arise, either, as follows: First, by reason of a benefit to the party promising, or, at his request, to a third person, by the act of the promisee; or, second, on occasion of the latter sustaining any loss or inconvenience, or subjecting himself to any charge or obligation, at the instance of the person making the promise, although such person obtains no advantage therefrom¹³.

purchaser of stolen property and the owner, under which the former is permitted to retain a portion of the property by voluntarily delivering the remainder to the owner, is void for want of consideration. *Morgan v. Hodges*, 89 Mich. 404.

9. *Jennison v. Stone*, 33 Mich. 99.

10. *Hall Mfg. Co. v. American Ry. Supply Co.*, 48 Mich. 331.

11. *Widiman v. Brown*, 83 Mich. 241.

12. *Wesleyan Seminary v. Fisher*, 4 Mich. 513.

13. *Rood v. Jones*, 1 Douglass, 188.

The rule seems to be well determined, that there must be a benefit on one side, or a detriment suffered or service done on the other. It is

not necessary that the benefit be to the party contracting; it may be to the benefit of any one else at his procurement or request. *Sanford v. Huxford*, 32 Mich. 313.

The employment of assistant counsel, payment of the jury fee, and giving bond for security for costs by the mortgagee was a sufficient consideration for the agreement. *Beistle v. McConnell*, 141 Mich. 463.

The defendant, a railroad company, acting through its general manager, verbally agreed to construct the side track along side of plaintiff's property, if he would move to a piece of land near its track, owned by him, a large building situated remote therefrom, and repair and remodel the same so as to make

§93. From, to Whom the Consideration Must Move.

It may be said that the consideration for a promise must move from the party who wishes to enforce it, and that the validity of a contract is not affected, if the consideration, where it moves from the promisee, does not pass directly to the promisor, but to a third person at the promisor's request¹⁴.

§94. The Relation of Consideration to Formal Contracts.

Formal contracts, as has been noted, are contracts under seal and contracts of record. They derive their validity from their form and not from the fact of agreement, nor from the consideration; in other words, the test is the form, not the consideration as in simple contracts, yet courts have endeavored to bring (or have brought) sealed contract within the test of the simple contract by deciding that a seal imports consideration¹⁵. At

it suitable for a warehouse; he at once removed, repaired and remodeled the building, the defendant refused to construct the side track as it agreed to do. The court decided that the expense incurred by the plaintiff in removing, repairing, and remodeling the building was the consideration, and it was a sufficient consideration. *Thomas v. South Haven, etc., R. Co.*, 138 Mich. 50.

The purchase by an individual of a stockholder's interest in a corporation affords a sufficient consideration for a contemporaneous agreement by the seller not to engage in the business carried on by the corporation. *Up River Ice Co. v. Denler*, 114 Mich. 296.

An agreement by residuary legatees that the proceeds of an insurance policy not otherwise disposed of by the will should be paid to their mother, who was the testator's widow, made after a complete settlement fixing the rights of all the parties to such estate, without affecting their rights to the policy, is void for want of consideration in the absence of fraud or mistake in making the settlement, but is supported by a sufficient consideration

if made by way of adjustment of fraud or mistake in the settlement. *Sheley v. Brooks*, 114 Mich. 11.

Payment of part of the price, and a promise to pay the balance if an option to purchase should be exercised, are a sufficient consideration for a personal agreement by the seller's agent to return the payment with interest if the option should not be exercised. *White v. Taylor*, 113 Mich. 543.

A promise by an owner of certain property to pay to the contractor labor claims arising from labor performed on the property will be sustained by a consideration based upon the fact that claims for labor under the statute might become liens upon the property. *Kiely v. Bertrand*, 67 Mich. 332; *Clare County Savings Bank v. Goodman*, 119 Mich. 338.

14. *Steers v. Holmes*, 79 Mich. 430.

15. C. L. '97, §10185 as to consideration, places simple executory, and sealed executory contracts upon the same footing. *Township of Danby v. Beebe*, 149 Mich. 312. *Hobbs v. Brush Electric Light Co.*, 75 Mich. 550; *Lee v. Wisner*, 38 Mich. 82; *Dye v. Mann*, 10 Mich. 291.

common law a seal was an impression upon wax or wafer affixed to an instrument, but a wax or wafer is no longer necessary to the validity of a seal, for it is the seal which authenticates and not the substance¹⁶. Although it is established that the seal imports consideration, yet the instrument may be attacked for fraud, mistake, surprise, duress, or total want of consideration¹⁷. The statutory rule¹⁸ that sealed instruments may be impeached

16. *Pierce v. Indreth*, 106 U. S. 648. In *Barton v. Gray*, 57 Mich. 634, the court said: "In modern times the attaching of a seal to a signature is not regarded with that reverence which was formerly the case; and when the legislature enacted that a seal or wafer was unnecessary, but that scroll or other device should be sufficient, the solemnity attending the execution of such contract vanished; and when the legislature further provided that no instrument should be held invalid for want of seal, and it became, under the statute mere *prima facie* evidence of consideration, the affixing of seals, except to instruments required by law to be under seal, became of no practical importance. Consequently, it has been held by this court that parties who have made written contracts may vary them afterwards, as much as they please, by parol, if the nature of the agreement is not such that the law requires them to be in writing."

17. *Hobbs v. Brush Electric Light Co.*, 75 Mich. 550.

18. C. L. '97, §10185. In any action upon a sealed instrument, and where a set-off is founded on any sealed instrument, the seal thereof shall only be presumptive evidence of a sufficient consideration, which may be rebutted in the same manner, and to the same extent, as if such instrument were not sealed.

C. L. '97, §10417. In all cases arising upon contracts under seal, or upon judgments, when an action of covenants or of debt may be maintained, an action of assumpsit may be brought and maintained, in

the same manner in all respects, as upon contracts without seal, and no bond, deed of conveyance or other contract in writing, signed by the party, his agent or attorney, shall be deemed invalid for want of a seal or scroll affixed thereto by such party.

An agricultural society, though differing from ordinary business corporations, is nevertheless to be classed as a private corporation, and a conveyance by it is not void for want of a seal. *Ismon v. Loder*, 135 Mich. 350.

Absence of seal does not affect validity. *Blagborne v. Hunger*, 101 Mich. 377; *Mae v. Benedict*, 98 Mich. 270; *Jerome v. Ortman*, 66 Mich. 670; *Barton v. Gray*, 57 Mich. 634; *Lockwood v. Bassett*, 49 Mich. 549; *Fowler v. Hyland*, 48 Mich. 181.

C. L. '97, §10185. In any action upon a sealed instrument, and where a set-off is founded on any sealed instrument, the seal thereof shall only be presumptive evidence of a sufficient consideration, which may be rebutted in the same manner, and to the same extent, as if such instrument were not sealed.

This statute as to consideration places simple executory and sealed executory contracts upon the same footing. *Township of Danby v. Beebe*, 147 Mich. 312.

In an action on an instrument under seal, want of consideration cannot be interposed as a defense unless notice thereof is given with the plea. *Hollenbeck v. Breakey*, 127 Mich. 555; *Boyer v. Sowles*, 109 Mich. 481; *Blagborne v. Hunger*, 101 Mich. 375; *Green v. Langdon*, 28 Mich. 226.

applies to all sealed instruments¹⁹.

Contracts of record, such as judgments²⁰ and recognizances²¹ are formal contracts, i.e., the demand under judgments arises upon statute, that is, upon a duty which the statute originates, and has no place in the law of contracts, but the liability belongs to that class of contracts called quasi-contracts which relate to transactions, devoid of any agreement whatsoever between the parties, nevertheless the law grounds them upon specific obligation²². The remedy is the only binding tie between these obligations and contracts²³.

§95. Consideration in Relation to Bills of Exchange and Promissory Notes.

The nature of these contracts is such that consideration is presumed and therefore need not be proved; but if the validity of the contract is attacked, the burden of proof falls upon the one who questions its validity. If the party sued can show that no consideration for the making or indorsing of the bill or note passed between himself and the party suing, the contract fails for want of consideration. This matter is now covered by the act known as the "Negotiable Instrument Law"²⁴.

§96. Valuable Consideration.

Valuable consideration in the sense of the law has been de-

19. *Hobbs v. Brush Electric Light Co.*, 75 Mich. 550.

20. A judgment is the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it, and it is only evinced by a record, or that which is by law substituted in its stead. *Whitwell v. Emery*, 3 Mich. 84.

21. A recognizance is a common law obligation, and, by the common law, the sureties may be bound separately from their principals. *People v. Dennis et al.*, 4 Mich. 609.

22. *Woods v. Ayers*, 39 Mich. 345.

23. *Woods v. Ayers*, 39 Mich.

345.

24. Sec. 26. Every negotiable instrument is deemed *prima facie* to have been issued for valuable considerations; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 27. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time.

Sec. 28. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who

fined²⁶ as consisting either in some right²⁶, interest²⁷, profit²⁸, or benefit²⁹ accruing to one party, or some forbearance³⁰, detriment³¹, loss³², or responsibility³³, act, labor, or service³⁴, given, suffered, or undertaken by the other party to whom the promise is made.

§97. Executed, Executory and Past Considerations.

Consideration may be divided into present or future, exe-

became such prior to that time.

Sec. 29. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 30. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 31. An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

25. Currie v. Misa, 11 Q. B. D. 138.

26. Stoddard v. Prescott, 58 Mich. 542; Stanley v. Nye, 54 Mich. 277; Farwell v. Johnston, 34 Mich. 342; Holland v. Hoyt, 14 Mich. 238.

Contractual rights.

Scanlon v. Northwood, 147 Mich. 139; Goebel v. Linn, 47 Mich. 489; Ortman v. Green, 26 Mich. 209; Moore v. Detroit Locomotive Works 14 Mich. 266.

Securities.

Norris v. Vosburgh, 98 Mich. 426; Bradshaw v. McLoughlin, 39 Mich. 480; Chanter v. Reardon, 32 Mich. 162; Mills v. Spencer, 3 Mich. 127.

27. Farwell v. Johnson, 34 Mich. 342.

28. Corkins v. Collins, 16 Mich. 478.

29. Sanford v. Huxford, 32 Mich. 313.

30. Illinois Roofing & Supply Co. v. Aerial Advertising Co., 142 Mich. 698; Union Trust Co. v. Conus, 129 Mich. 156; Davis v. Teachout's Estate, 126 Mich. 135; Lansing Nat. Bank v. Coleman, 117 Mich. 177; Mosher v. Lansing Lumber Co., 112 Mich. 517; Fraser v. Backus, 62 Mich. 540; Burchard v. Fraser, 23 Mich. 224.

31. Sanford v. Huxford, 32 Mich. 313.

32. Corkins v. Collins, 16 Mich. 478.

33. Crowley v. Landon, 127 Mich. 51; Harrah v. Doherty, 111 Mich. 175.

34. Sword v. Keithe, 31 Mich. 247; Howe v. Hyde, 88 Mich. 91.

Cases illustrative of what constitutes consideration:

Wright v. Kaynor, 150 Mich. 7; Beistle v. McConnell, 141 Mich. 463; Thomas v. South Haven & F. R. Co., 138 Mich. 50; Up River Ice Co. v. Denler, 114 Mich. 296; White v. Taylor, 113 Mich. 543; McKinney v. Jones, 89 Mich. 26; Franks v. Stevens, 82 Mich. 192; Averill v. Wood, 78 Mich. 343; De Camp v. Scofield, 75 Mich. 419; Hobbs v. Brush Electric Light Co., 75 Mich. 550; Tuttle v. Campbell, 74 Mich. 654; Barker v. Browns Estate, 74 Mich. 169; Hickey v. Morrison, 69 Mich. 139; Keiley v. Bertrand, 67 Mich. 332; Baumier v. Antiau, 65 Mich. 31; Fraser v. Backus, 62 Mich. 545; Stoddard v. Prescott, 57 Mich. 542; Dennis v. Shaver, 56 Mich. 224;

cuted or executory, but not into past³⁵. An executed consideration is an act already done, or value already given³⁶ and it is no consideration for any other promise than that which the law will imply. An executory consideration is a promise to do or to give something in the future; or when a promise is given for a promise the contract is said to be based upon an executory consideration³⁷.

§98. Illegal Consideration.

It is a well settled doctrine that an illegal transaction cannot form a valid consideration for a promise, or that contracts of which the consideration or object is in violation of law are void and cannot be enforced³⁸, and it may be laid down in regard to

Parsons v. Frost, 55 Mich. 250; Stanley v. Nye, 54 Mich. 277; Loud v. Winchester, 52 Mich. 174; Conrad v. LaRue, 52 Mich. 83; Kennedy v. Shaw, 43 Mich. 359; Allen v. Duffie, 43 Mich. 1; Bradshaw v. McLoughlin, 39 Mich. 480; Randall v. Randall, 37 Mich. 563; Calkins v. Chandler, 36 Mich. 320; Reithmaier v. Beckwith, 35 Mich. 110; Perkins v. Hoyt, 35 Mich. 506; Sanford v. Huxford, 32 Mich. 313; Sword v. Keith, 31 Mich. 247; Sheldon v. Rice, 30 Mich. 296; West v. Laraway, 28 Mich. 464; Ortman v. Green, 26 Mich. 209; Baker v. Johnston, 21 Mich. 319; Corkins v. Collins, 16 Mich. 478; Comstock v. Howd, 15 Mich. 237; More v. Detroit Locomotive Works, 14 Mich. 266; Holland v. Hoyt, 14 Mich. 238; Cummings v. Stone, 13 Mich. 70; Underwood v. Waldron, 12 Mich. 73; Gates v. Shutts, 7 Mich. 127; Wesleyan Seminary v. Fisher, 4 Mich. 515; Bonebright v. Pease, 3 Mich. 316; Mutts v. Spencer, 3 Mich. 127; People v. Taylor, 2 Mich. 250; Van Dyke v. Davis, 2 Mich. 144; Weed v. Torry, 2 Dougl. 344; Bostwick v. Dodge, 1 Dougl. 413; Rood v. Jones, 1 Dougl. 188.

What does not constitute:

Grand Rapids Wood Finishing Co. v. Hatt, 152 Mich. 132; Richmond v.

Nye, 126 Mich. 602; Damon v. Debar, 83 Mich. 262; Ducett v. Wolf, 81 Mich. 311; Rens v. Grand Rapids, 73 Mich. 237; Robinson v. McAfee, 59 Mich. 375; Ross v. Jackson, 40 Mich. 30; Liddle v. Needham, 39 Mich. 147; Halsted v. Francis, 31 Mich. 113; Fuller v. Sweet, 30 Mich. 237; Kanady v. Burk, 18 Mich. 278; Hall v. Soule, 11 Mich. 494; Davis v. Rider, 5 Mich. 438; Austin v. Grant, 1 Mich. 490; Wilson v. Davis, 1 Mich. 156.

35. See Ludlow v. Hardy, 38 Mich. 690.

36. Vereycken v. Vanderbrooks, 102 Mich. 119.

37. Where the consideration for defendant's promise is the executory promise of the plaintiff, they cannot recover without showing performance on their part. De Camp v. Scofield, 75 Mich. 449.

38. Comstock v. Draper, 1 Mich. 481.

If any part of an indivisible promise, or any part of an indivisible consideration for a promise, is illegal the whole is void, and no action can be maintained thereon. Case v. Smith, 107 Mich. 415; McNamara v. Garbett, 68 Mich. 454.

A sale of liquors in violation of the prohibitory liquor law cannot support a new promise made after

subsequent contracts, that if they be unconnected with the illegal act, they will become valid, when based upon a new consideration, and will be enforced, although they may have grown out of the illegal transactions, and the party to whom the promise was made, may have a knowledge of it³⁹.

§99. Mutual Promises.

It may be generally said that mutual promises are considerations for one another. The principle which is not without exception is that, in order to make an agreement between competent parties binding, it must be mutual where the consideration consists of the mutual promises⁴⁰. The consideration for the modification of a contract must be equally as mutual as the agreement was mutual, i.e., a mutual agreement can only be terminated by like mutuality⁴¹.

§100. Adequacy of Consideration.

The fact that simple contracts and certain formal contracts must have a valuable consideration does not make it essential that the adequacy of the consideration should be questioned from

the repeal of the law. *Ludlow v. Hardy*, 38 Mich. 690.

A person against whom criminal proceedings for adultery had been instituted agreed, in consideration of the discontinuance of the action, to make payments to his wife, and gave a mortgage to secure the obligation to do so. Notwithstanding the illegality of the consideration, a bill to foreclose the mortgage was sustained on the ground that the transaction was only voidable and had been ratified by subsequent acts of payment. On appeal this result was left standing by the equal division of the supreme court. *Lyon v. Waldo*, 36 Mich. 345.

Other illustrative cases: *Williams v. Guards*, 34 Mich. 82; *Flint & P. M. R. Co. v. Dewey*, 14 Mich. 477. *Underwood v. Waldron*, 12 Mich. 73. 39. *Smith v. Barstow*, 2 Douglass, 153.

40. *Wilkinson v. Heavenrich*, 58 Mich. 574.

Other cases on mutuality: *Alderton v. Williams*, 139 Mich. 296; *Durbin v. Smith*, 115 Mich. 239; *Wardell v. Williams*, 62 Mich. 50, 4 Am. St. Rep. 814; *Jones v. Shaw*, 56 Mich. 332; *Conrad v. LaRue*, 52 Mich. 98; *Tower v. Detroit, etc., R. R. Co.*, 34 Mich. 328; *Michigan & R. R. Co. v. Bacon*, 33 Mich. 466; *Stevens v. Corbitt*, 33 Mich. 458; *Baker v. Johnston*, 21 Mich. 319; *Comstock v. Howd*, 15 Mich. 237; *Underwood v. Waldron*, 12 Mich. 73.

41. *Perkins v. Hoyt*, 35 Mich. 506.

No separate consideration necessary where the change concerning delivery was at the desire of the defendants and for their benefit, and was mutually assented to and mutually approved. *McKay v. Evans*, 48 Mich. 597.

The promise to extend the time of

the standpoint of value⁴². It is the policy of the law not to interfere with the free exercise of the will and judgment of the parties who enter into contracts in order to ascertain the value of the consideration by weighing the *quid pro quo*, for fear that the freedom of contract would be curtailed.

§101. Consideration in Equity.

In equity consideration has been divided into good and valuable. A good consideration is founded on blood or natural affection of near relations⁴³. Valuable consideration has been defined⁴⁴. Inadequacy of consideration as to price is where it is so gross and palpable as of itself to induce a court of equity to stay the exercise of its discretionary powers to enforce a specific performance, and leave the party to his remedy at law; but inadequacy of price merely, without being such as to prove fraud conclusively, is not a good objection against decreeing a specific performance⁴⁵.

§102. Contingent Consideration.

A promise for a promise which incurs a contingent obligation is a valid contract and the contingent obligation becomes a valuable consideration when acted upon or performed. An offer to sell a quantity of goods or render services at a price fixed, provided the quantity of goods or the amount of services to be rendered is fixed, is a valid proposal, which upon acceptance completes the contract. Although the contract is bilateral in that

payment, if made, was a mere naked promise, resting in parol, without any consideration, and was therefore of no validity. *Bartlett v. Smith*, 146 Mich. 188, 117 Am. St. Rep. 625.

A contract, the nature of which is such that it need not be in writing, can be varied by parol, if the parol agreement is valid and based on a consideration. *Barton v. Gray*, 57 Mich. 622.

A proposed arrangement may lawfully be modified by accepting it on different terms, or it may be changed

verbally afterwards, if not required to be written. *Smith v. Detroit, Hillsdale and S. W. R. Co.*, 56 Mich. 529.

42. *Barnes v. Foxen*, 53 Mich. 475.

43. *Anson on Contracts*.

44. See §96.

45. *Burtch v. Hoggs*, Harr. 31. Setting aside deed: *Keagle v. Pessell*, 91 Mich. 618; Advantage taken of a person's financial distress. *Butler v. Duncan*, 47 Mich. 94. Undue influence coupled with fraud: *Case v. Case*, 26 Mich. 474.

its promises are mutual, yet the *will* only comes into effect at the will of one of the parties. The general doctrine is that an offer to furnish such goods as the offeree may want within a stated time may, upon acceptance by the offeree before withdrawal, constitute a valid contract, if the offeree orders any portion of the goods, and the offerer has the benefit of the sale,—this constitutes a sufficient consideration to make the entire contract valid and binding⁴⁶.

§103. Conditional Promises.

The consideration in the cases of conditional promises partakes very much of the same nature as the consideration in contingent obligations. These promises arise mainly in cases where money must be paid upon some approval, i.e., where the quality of the goods to be purchased or the work to be done is to be passed upon by some authorized person before the money is paid, or in cases of reward⁴⁷.

§104. Performance of Legal Obligation.

The consideration for a new promise of what a man is already bound to do for the promisor is involved in a substituted agreement by which the surrender, relinquishment or waiver of legal rights or the incurrence of legal obligation under the original contract is the consideration for the performance of the contract. The general principle may be stated that where parties relinquish or waive their rights under a contract (leaving something still to be done) and enter into a new agreement, the waiver or relinquishment of the rights under the original contract is the consideration for the performance of the new contract⁴⁸; i.e., the release and discharge of accrued rights under a

46. *Cooper v. Lansing Wheel Co.*, 94 Mich. 272.

47. *Loveland v. City of Detroit*, 41 Mich. 367; *Wood v. Pierson*, 45 Mich. 313.

48. *Moore v. Detroit Locomotive Works*, 14 Mich. 266. In this case

Justice Cooley said: "Each of these cases is to the point now in issue before us. It is true that in each the abandonment of the contract by the plaintiff was before very much had been done under it, and on the claim that the bargain was a hard

contract is a valuable consideration for a new promise, so is the cancellation and discharge of a contract⁴⁹. On the contrary it is well settled that a debtor in paying only a portion of the debt, when he is bound to pay the whole, does not furnish thereby a consideration for a promise by the creditor to discharge the debt and such payment is treated in law as a payment *pro tanto*⁵⁰, nor is the promise of a payee of a matured note to pay interest at the same rate or a less rate than his note calls for, a sufficient consideration for a promise to the maker to extend the time of

one upon him. But neither of these circumstances can distinguish the cases from the present. An unprofitable contract is not, by that circumstance, made any the less binding on the promisor; and the promisee has the same right, and the same power to discharge a contract in consideration of a new promise, after breach as before. A different case would be presented if the plaintiffs below had relied upon an agreement to waive the damages made after delivery; for in that case nothing would have remained for them to do or to promise which could be a consideration for the waiver. But here, although they had done the work which enabled them to deliver the engine, they refused altogether, according to their statement, to go further, except under the substituted agreement; so that the plaintiffs in error actually received the property under the promise which they now insist is invalid. If they regarded it for their interest at the time to make the arrangement, and have obtained the property under it, it is not in our power to set it aside on the ground of their being entitled to just as much under the contract before existing.

The surrender by a foreign executor to an heir of a portion of the estate, which the executor had a right to hold until the estate was closed, and from which he would have been entitled to deduct his fees, is a sufficient consideration for a

promise by the heir to pay the executor an agreed sum in lieu of such fees. *Rickey v. Morrison*, 69 Mich. 139. The relinquishment by a "homesteader" of his rights in land located under the homestead law is a good consideration for notes given to secure the payment of the price agreed to be paid for such interest. *McCabe v. Caner*, 68 Mich. 182.

49. *Blagborne v. Hunger*, 101 Mich. 375.

"If they regard it for their interest at the time to make the arrangement, and have obtained the property under it, it is not in our power now to set it aside on the ground of their being entitled to just as much under the contract, before existing. They knew their legal rights at the time, and must be supposed to have consulted their own interests in entering into the new arrangement." *Goebel v. Linn*, 47 Mich. 489; *Perkins v. Hoyt*, 35 Mich. 506.

50. *Leeson v. Anderson*, 99 Mich. 247; *Briggs v. Norris*, 67 Mich. 325. In the latter case, it was decided that payment of a part of a debt actually due, without any *bonus*, is no consideration for an extension of the time on the balance to the debtor.

An agreement by the payee of a note after it was executed to cancel the same at his death, by will, upon the regular payment of interest by the maker, was without consideration and void. *Trombly v. Klersky*, 141 Mich. 73. See *Davis v. Rider*, 5 Mich. 423.

payment⁵¹, *unless acted upon*⁵². But where the subject-matter involves an uncertainty or a doubt, the general rule may be laid down that where parties are in doubt or uncertain about their rights concerning the matter in dispute, an agreement by which they definitely settle the same is binding and the consideration lies in the exchange of a doubt or uncertainty for a certainty⁵³.

§105. Performance of Broken Contracts.

The principle here involved is somewhat similar to the first one enunciated in the preceding section. It is settled that a promise to give additional compensation for the performance of a broken contract must be founded on a sufficient consideration and it is binding only when the transaction leads up to the substitution of a new contract for the old one⁵⁴. Where a building contractor promised after he had completed his part of the contract to put on another coat of oil on the inside of the house and no additional consideration was offered, the promise was without consideration⁵⁵.

§106. Forbearance.

Consideration may consist in a forbearance or a promise to forbear from doing something a party has the right to do or is

51. *Vereycken v. Vanderbrooks*, 102 Mich. 119. In this case the court said: "We think the written memorandum may be well construed to be an open proposition to plaintiff to retain the money, at least until further demand, at the rate of eight per cent., and that, when acted upon, the mortgagee cannot be permitted to exact a greater rate of interest."

52. These words are mere *dictum*, nevertheless they are significant.

53. *Weed v. Terry*, 2 Douglass, 344. The court said: "It was the compromise of a doubtful claim. This of itself would constitute a sufficient consideration to support the agreement. The circumstances that such a compromise would save the

parties the vexation and expense of a law suit, would also have been a good consideration for the agreement." *Van Dyke v. Davis*, 2 Mich. 144.

54. *Endriss v. The Belle Isle Ice Co.*, 49 Mich. 379.

In this case it was decided that it was for the jury to decide whether the later arrangement was merely a modification of the first contract, as claimed by the defendant, or whether plaintiff made it, as he claimed, in pursuance of his duty to use reasonable efforts to mitigate the damages.

55. *Widiman v. Brown*, 83 Mich. 241.

entitled to do⁵⁶. It is essential that certain elements be in existence in order to constitute forbearance a valuable consideration⁵⁷.

First, a subsisting right must be in the claimant in which the agreement of forbearance is based⁵⁸.

Second, a party against whom the right is enforceable must be present⁵⁹.

Third, an agreement to forbear, either express or implied, must be consummated⁶⁰.

The question of time, whether the forbearance be for a long or a short time, is of no consequence⁶¹.

§107. Consideration for Benefit of Third Persons.

Where in pursuance of an agreement and in consideration that one B would pay and assume the indebtedness for the erection of a building for A; A, at the special instance and request of B, executed and delivered to the wife of B a mortgage on A's property for the amount of the transaction assumed and agreed to pay an amount due C, and C agreed to the arrangement and released A from such obligation, and accepted B therefor, the execution and delivery of the note and mortgage was sufficient consideration to establish B's personal liability⁶².

§108. Consideration in Relation to Bailment.

Consideration is deemed sufficient when, on account of the confidence the bailer reposes in the bailee, it is based upon the former surrendering of the right of possession of his property to the latter. Where a foreign executor surrendered to an heir a portion of the estate, which the executor had a right to hold until the estate was closed, and from which he would have been entitled to deduct his fee, the surrender of the right of possession

56. Union Banking Co. v. Martin Estate, 113 Mich. 521; Mosher v. Lansing Lumber Co., 112 Mich. 517; Aultman, etc., Co. v. Gorman, 87 Mich. 233; Fraser v. Backus, 62 Mich. 540; Parsons v. Frost, 55 Mich. 230; Calkins v. Chandler, 36 Mich.

320; West v. Laraway, 38 Mich. 464.

57. Rood v. Jones, 1 Douglass 188.

58. Rood v. Jones, 1 Douglass 188.

59. Rood v. Jones, 1 Douglass 188.

60. Rood v. Jones, 1 Douglass 188.

61. Rood v. Jones, 1 Douglass 188.

62. Barker v. Brown's Estate, 74 Mich. 169.

of the property was deemed a sufficient consideration for a promise by the heir to pay the executor an agreed sum in lieu of such fees⁶³.

§109. Future Considerations.

The doctrine relating to future considerations is that a mere promise to do an act in the future is a sufficient consideration, even without performance, when the promise will subject the party making it to a charge or obligation by which he incurred a liability that he otherwise did not need to incur, and in case he fails or refuses to perform the act, the party to whom the promise was made may have an action for damages⁶⁴.

§110. Future Advances.

A mortgage given in good faith to secure future advances as well as to cover present indebtedness is based upon a sufficient consideration and the mortgage is valid, but does not become operative as to the amounts to be advanced until these amounts are actually paid⁶⁵.

A promise not being upon any consideration moving from the plaintiff is void. *Brown v. Hazen*, 11 Mich. 219. An agreement to forbear to sue a debtor is a good consideration for the promise of a third person to pay the debt. *Rood v. Jones*, 1 Douglass 188.

Agreement to forbear to sue between debtor and creditors: *Robinson v. Godfrey*, 2 Mich. 408.

63. *Rickey v. Morrison*, 69 Mich. 139.

64. *Wardell v. Williams*, 62 Mich. 51.

65. *Hyde v. Shank*, 77 Mich. 517; *Newkirk v. Newkirk*, 56 Mich. 525; *Weed v. Terry*, 2 Douglass 344, 45 Am. Dec. 257; *Van Dyke v. Davis*, 2 Mich. 144: An employer's agreement, in consideration of an employee's compromising a claim for personal injuries, to retain the latter in

his service for life, or as long as he is able to do the work required, is enforceable, although the employee does not bind himself to continue in the employment. *Stearns v. Lake Shore & Mich. Southern Railway Co.*, 112 Mich. 651; *Gemberling v. Spaulding*, 104 Mich. 217; *McKinney v. Jones*, 89 Mich. 26; *Baumier v. Antiau*, 65 Mich. 31; *Stanley v. Nye*, 54 Mich. 277; *Sanford v. Huxford*, 32 Mich. 313.

Settlement of unliquidated demand: *Wheeler v. Baker*, 132 Mich. 507.

Want of consideration: *Upton v. Dennis*, 133 Mich. 238.

Compromise of funds embezzled: *Miller v. Minor Lumber Co.*, 98 Mich. 163, 39 Am. St. Rep. 524; *Wolf v. Troxell*, 94 Mich. 573.

Compromise of bastardy suits: *Taylor v. Dansby*, 42 Mich. 82.

§111. Compromise of Doubtful and Unliquidated Claims.

The principle here involved is similar in nature to the one involved in pre-existing legal and equitable obligations. It is manifest that the existence of a debt will raise an implied promise to pay and therefore it will be a sufficient consideration to support an express promise to pay the debt, so it is a well established principle that the compromise and settlement of an asserted claim, involved in legal controversy, be it never so doubtful, constitutes a sufficient consideration by the settlement, and for any obligations given by one party to the other in consideration of such settlement⁶⁶. It makes no difference whether the claim is enforceable or not, an agreement made in compromise of it, or to avoid or settle litigation, is based upon sufficient consideration, and this is true when no right exists in fact⁶⁷, or the claim proves to be unfounded in law⁶⁸. The merit or validity of the claim cannot be investigated or questioned after it has been compromised⁶⁹.

§112. Composition With Creditors.

There are difficult questions that arise in regard to considerations in contracts relating to the composition with creditors. It is well settled that where the creditors accept part of a debt in satisfaction of the whole, a compromise on this basis is not binding for want of consideration, but, where a debtor compromises with his creditors by joining in an agreement with them whereby they agree to accept part payment in satisfaction of the whole, such a contract is binding and founded on a sufficient consideration⁷⁰. The withdrawal of opposition to bankruptcy proceedings already begun, and consenting to amendments and

66. *Sanford v. Huxford*, 32 Mich. 313, 20 Am. Rep. 647.

67. *Gates v. Shutts*, 7 Mich. 127.

68. *Sheldon v. Rice's Estate*, 30 Mich. 296, 18 Am. Rep. 136.

69. *Hall Mfg. Co. v. Am. R. Supply Co.*, 48 Mich. 331.

70. See *Whitemore v. Stephens*, 48

Mich. 573; *Browning v. Crouse*, 40 Mich. 339. In order to bind a non-assenting creditor by composition proceedings, and to operate as a discharge of his debt, a strict compliance with the requirements of the statute is essential. *Harrison v. Gamble*, 69 Mich. 96.

an adjudication of bankruptcy involves a sufficient consideration for agreement between petitioning creditors and the debtor⁷¹.

§113. Subscription Paper.

It is well settled that where a subscription is made by which the signers promise to pay the several sums subscribed for a certain promise, and something has been done, or some liability or duty assumed, in reliance upon the subscription, in order to carry out that object, the promises are binding, and may be enforced, although no pecuniary advantage is to result to the promisors⁷², and no payee is named in the subscription paper⁷³. The general rule is that the mutual promises of the subscribers to a subscription paper are a sufficient consideration, provided the object is made definite and certain⁷⁴.

§114. Pre-Existing Obligations.

The doctrine is well established that the extinguishment of a pre-existing debt is as sufficient a consideration for the transfer of a negotiable instrument as the payment of money, or the delivery of any species of property whatever⁷⁵.

§115. Past Consideration.

Consideration may be executed or executory but it must not be past⁷⁶.

71. *Sanford v. Huxford*, 32 Mich. 313, 20 Am. Rep. 647.

72. *Underwood v. Waldron*, 12 Mich. 73; *First Universalist Church v. Pungs*, 126 Mich. 670; *Allen v. Duffe*, 43 Mich. 1; *Baker v. Johnston*, 21 Mich. 319; *Comstock v. Howd*, 15 Mich. 237.

73. *First Universalist Church v. Pungs*, 126 Mich. 670; *Allen v. Duffe*, 43 Mich. 1.

74. *The Wesleyan Seminary v. Fisher*, 4 Mich. 515.

75. *Bostwick v. Dodge*, 1 Douglass 413. A mortgage as a consideration for a pre-existing debt. *Wright v. Towle*, 57 Mich. 255. *Hanold v. Kays*, 64 Mich. 439; *Outhwaite v.*

Porter, 13 Mich. 533.

76. *Ludlow v. Harder*, 38 Mich. 690. In this case the court said: "The original transaction was within the operation of the statute, and was condemned by it. As a sale it was forbidden and illegal, and it was also forbidden and illegal as a gift; and although like transactions subsequent to the repeal of the statute referred to would not stand forbidden and illegal, the act in question, which occurred during the existence of the statute, has never become lawful. It had no legal vitality, originally, and nothing has occurred since to breathe life into it. It has never been transformed into a valid

§116. Moral Obligation.

In cases of bankruptcy the discharge of the debtor only effects to suspend the right of action against him, the moral obligation is not wiped out thereby and it is a general rule that the moral obligation to pay the debt forms a sufficient consideration for the promise to make such payment and it need not be in writing⁷⁷.

§117. Modification of Contract.

Parties may modify a proposition by acceptance on different terms or by changing it afterwards, where not required to be written, but it can hardly be said that the doctrine of release applies in such a case. The rule of special consideration does not apply where the parties carry out their new agreement and where the same may be terminated at any time by the parties⁷⁸. It is a well known principle that parties who have made valid contracts may modify them afterwards, provided the law does not require them to be in writing, as much as they please by subsequent parol contracts, based upon sufficient consideration⁷⁹.

act. Hence it has never been sufficient to afford any consideration for a promise." See *Bennett v. Knowles*, 111 Mich. 226. In this case the court said: "The paper writing, if it was given, was valid. Each party performed the oral agreement in part. Plaintiff gave her deed, and defendant gave his. She declined to give possession until he bound himself in writing to pay the excess over \$2,000 existing as an incumbrance, and to give her possession. This writing is no more without consideration than a promissory note for the money would be, and there was no more occasion for the plaintiff's signature upon it. It was a conditional promise, the consideration for which he had already received. The proposi-

tion that this promise to pay was void because it was an undertaking to pay the debt of another is without merit. It is elementary that an original promise to pay the existing debt of a third party, where based upon a present consideration, is not within the statute of frauds."

77. *Bennett v. Knowles*, 111 Mich. 226; *Ludlow v. Hardy*, 38 Mich. 690.

78. *Smith v. Det., Hillsdale & Southwest Ry Co.*, 56 Mich. 529; *McKay v. Evans*, 48 Mich. 597.

79. *Barton v. Gray*, 57 Mich. 622; *Perkins v. Hoyt*, 35 Mich. 506.

A parol promise by the vendor in a land contract to extend the time for a payment, made without any consideration, is invalid. *Bartlett v. Smith*, 146 Mich. 183, 177 Am. St. Rep. 625.

§118. Unenforceable Consideration.

Oral contracts relating to real estate are not binding for want of consideration and it is therefore unenforceable⁸⁰.

§119. Failure of Consideration.

Failure of consideration results from the inherent defect in the consideration itself; i.e., the thing given or the non-performance of the act, either in part or in whole, as agreed to by the promisee. The rule is well known that when the promisor receives all he bargains for, he cannot find fault with the value of the consideration⁸¹.

§120. The Effect of Failure or Want of Consideration.

The effect of failure of consideration through inherent defects or through fraud, mistake, surprise, duress, or through want of consideration, whether partial or whole, makes the transaction invalid and ineffectual⁸², and in case of partial want or failure, the good and sufficient of the consideration that remains will render the promise valid⁸³. It is well settled that a simple executory promise when not supported by a valuable consideration is void as between the parties who entered into the contract⁸⁴.

§121. Consideration in Relation to Mutuality.

The doctrine of mutuality is as essential to a valid contract as the doctrine of consideration, and they are inherent in one an-

80. *DeMoss v. Robinson*, 46 Mich. 62, 41 Am. Rep. 144; *Bigley v. Souvey*, 45 Mich. 370; *Liddle v. Needham*, 39 Mich. 147, 33 Am. Rep. 350.

81. *Valley City Milling Co. v. Prange*, 123 Mich. 211; *Hunt v. Thorn*, 2 Mich. 213.

Where defendant received a grant of the right to use certain water power, and dig a race on complainant's land, in consideration of erecting a mill at a certain place where their lands joined, and then built his

mill at another place, and diverted the water from complainant's land, it was held, that the consideration had failed. *Jacox v. Clark*, Walk. 508.

82. *Hobbs v. Detroit Electric Light Co.*, 75 Mich. 550; *Hackley v. Headley*, 45 Mich. 569.

83. *Wesleyan Seminary v. Fisher*, 4 Mich. 515.

84. *Damm v. De Bar*, 83 Mich. 202; *Harris v. Creveling*, 80 Mich. 249; *Stewart v. Jerome*, 71 Mich. 201, 15 Am. St. Rep. 232.

other. Mutuality and consideration consist in the fact that one party has *done* upon the promise of the other, *what* the latter required, in other words the obligation of mutuality has its source in that one party agrees to do or permits something to be done in consideration of the act or promise of the other party. There must be a binding tie between both parties. The inherent relation existing between mutuality and consideration is clearly manifest in those cases in which it is difficult to detect the lack of mutuality. Thus, in contracts which are to be performed at the option of the adversary party⁸⁵ there can be no contract without mutuality⁸⁶. Naturally the subject-matter of the contract is closely allied to these doctrines. Parties may make and carry out any agreement they please which does not affect the public or the rights of third persons, but in case of dispute they must not expect the courts to enforce any unconscionable bargain they may have thought proper to make⁸⁷. Contracts must not contravene the provisions or policy of any public law⁸⁸ or must not be against public policy⁸⁹. The subject-matter which gives rise to the delivery of a consideration on the part of one party, and the assumption of obligation on the other, must have a present or potential existence, otherwise there is no contract where there turns out to be no subject-matter⁹⁰. Further it is essential that the subject-matter of the contract be expressed in such definite form that it can be easily ascertainable; i.e., within a reasonable degree of certainty⁹¹.

§122. Consideration in Relation to Subject-Matter.

The distinction between consideration and subject-matter is merely an arbitrary one, for, if there is one, it is a distinction

85. *Cooper v. Wheel Co.*, 94 Mich. 272, 24 Am. St. Rep. 810; *Wardell v. Williams*, 62 Mich. 50, 4 Am. St. Rep. 814; *Welch v. Whelpey*, 62 Mich. 15, 4 Am. St. Rep. 810; *Wilkinson v. Heavenrich*, 58 Mich. 574, 55 Am. Rep. 708.

86. *Finley Stove, etc., Co., v. Kurtz*, 34 Mich. 90; *Michigan College of Medicine v. Charlesworth*, 54 Mich. 522; *Pierce v. Pierce*, 55 Mich.

629; *Wilkinson v. Heavenrich*, 58 Mich. 594, 55 Am. Rep. 708; *Davie v. Mining Co.*, 93 Mich. 491.

87. *Mayer v. Hart*, 40 Mich. 517.

88. *Smith v. Barstow*, 2 Dougl. 155.

89. *Case v. Smith*, 107 Mich. 416.

90. *Gibson v. Felkie*, 37 Mich. 380.

91. *Cummer v. Butts*, 40 Mich. 322, 29 Am. Rep. 530; *Bumpus v. Bumpus*, 53 Mich. 246.

between essence and substance. Subject-matter as an object in the light of legality is the substance, while consideration as a right in the light of forbearance or acquisition is the essence. But subject-matter may be consideration, and consideration, subject-matter, it is a matter of choice, for subject-matter may be either the acquisition or forbearance of a right, and in some instances it may be both at one and the same time. If subject-matter, like offer, exists on one side, and consideration, like acceptance, on the other side, it is manifest that they become merged into one complete transaction and a unity between them is formed.

§123. Assent in Relation to Consideration.

Subject-matter, consideration and mutuality all stand on the same common ground and it follows therefore that assent bears an important relation to all these elements. The free mutual assent of the parties is essential to constitute a contract and to make at least a *prima facie* showing that the minds of the parties met. It is in the coming together of the parties upon the common ground of mutual understanding of the facts and elements constituting the contract as well as the entire subject that the minds meet and assent to it given⁹². Consequently, assent implies meeting of the minds, and must mean the same thing in the same sense⁹³. The mutuality of understanding and assent must embrace the entire contract⁹⁴. No contract can come into existence until all parties understand alike and until then no assent can be given. Where parties intend to make a contract in duplicate so that each shall have in his possession the evidence of his rights and of the obligations of the others, the contract is not complete and duly executed until duplicates at least *substantially* alike are executed and delivered, in such a case each

92. *Ferguson v. Hemingway*, 38 Mich. 159; *Woods v. Ayres*, 39 Mich. 351.

93. *People v. Auditor General*, 17 Mich. 183; *Davis v. Burt*, 26 Mich. 436; *Eggleston v. Wagner*, 46 Mich.

610; *Toledo, etc., R. Co. v. Lamphear*, 54 Mich. 582.

94. *Whiteford v. Hitchcock*, 74 Mich. 208; *Eggleston v. Wagner*, 46 Mich. 610.

of the duplicates is to be treated as an original⁹⁵. The affixing of a signature by a party to a contract gives rise to the presumption that he gave his assent and it makes no difference in his liability under his written contract whether he read it or not, where it does not appear that he was deceived or misled as to its contents, or that he objected to its terms. When a contract is tainted with fraud or the assent was procured by force, and the signer was faultless, there can be no element of voluntary assent⁹⁶.

§124. Types of Consideration.

An option in a lease whereby the lessee has the right and privilege to renew the lease or purchase the land and which forms a part of the inducement for the execution of the lease, constitutes a sufficient consideration, although it is unilateral in the sense that the lessee was under no obligation to renew the lease or purchase the land⁹⁷. A consideration for the assignment of a mortgage is sufficient for a settlement of a disputed claim made in good faith for damages on account of alleged false representations on an exchange of land⁹⁸. A promise to pay, under certain circumstances, for the party's share of the work to be done is a sufficient consideration⁹⁹. Where, at the request of her husband, the wife sells property upon the condition that the husband would sign a release of all of his claims against the vendee, the sale of the property is a sufficient consideration for the release¹⁰⁰. It is manifest that where the consideration for an agreement sued upon is the executory promise of the plaintiffs, they cannot recover without showing performance on their part¹⁰¹. A sufficient consideration may be found in the act of taking a discharged employee back into service at fixed wages,

95. *Crane v. Partland*, 9 Mich. 493; *Ahearn v. Ayres*, 38 Mich. 692.

96. *McEwan v. Ortman*, 34 Mich. 325; *McGinn v. Tobey*, 62 Mich. 253, 4 Am. St. Rep. 846.

97. *Wright v. Kaynor*, 150 Mich. 7.

98. *McKinney v. Jones*, 89 Mich. 26.

99. *Franks v. Stevens*, 82 Mich. 192.

100. *Averill v. Wood*, 78 Mich. 342.

101. *DeCamp v. Scofield*, 75 Mich. 419.

with a promise for a steady employment, for the release by him of a claim for damages for injuries received through the negligence of the employer prior to such discharge¹⁰². Where a wife endorsed a certificate of deposit to her husband with other items of value, a sufficient consideration for his transfer to her of an interest in a stock of goods is established¹⁰³. A mortgage executed to B's wife is a sufficient consideration for B's promise to pay to plaintiff money lent to a society whereof B was a member, and to secure which money, with other moneys advanced to B, the mortgage had been given¹⁰⁴. The surrender by a foreign executor to an heir of a part of the estate which such executor had a right to hold until the estate was closed, and from which he would have been entitled to deduct his fee, is a sufficient consideration for the heir's promise to pay him an agreed sum in lieu of such fee¹⁰⁵. The fact that labor claims, if not paid, may become liens upon one's logs constitutes a good consideration for the promise to a contractor to pay the latter's laborers¹⁰⁶. Where parties are in litigation concerning their leasehold rights a compromise arrangement without fraud, by which the litigation is to be stopped and the lease surrendered, is based on a sufficient consideration¹⁰⁷. An extension of time and forbearance of execution is a sufficient consideration for a judgment debtor's oral promise to pay the balance due on the judgment¹⁰⁸. A consideration is good and valid where a testator left property to A and to B on condition that they should pay his debts, and A agreed to pay B's share of the debts, according to the amount of the indebtedness found by the probate court to exist, in consideration of B's surrendering his share of the estate to A¹⁰⁹. An admission of liability and a promise to pay a debt is a sufficient consideration for the avoidance of a suit about to be barred

102. *Hobbs v. Brush Electric Light Co.*, 75 Mich. 550.

103. *Tuttle v. Campbell*, 74 Mich. 654.

104. *Barker v. Brown's Estate*, 74 Mich. 169.

105. *Rickey v. Morrison*, 69 Mich. 139.

106. *Kiely v. Bertrand*, 67 Mich. 332.

107. *Baumier v. Antiau*, 65 Mich. 31.

108. *Stoddard v. Prescott*, 57 Mich. 543.

109. *Dennis v. Sharer*, 56 Mich. 224.

by the statute of limitations¹¹⁰. A transfer of land for less than its value is a legal consideration for an agreement by the transferee that he will settle certain claims arising out of mutual transactions and standing against the person making the transfer¹¹¹. For the reduction of a debt and the release of personal liability, a valuable consideration is furnished in the transfer by a debtor of the title, possession and control of the debtor's property, whereby the transferee receives advantages in the exclusion of other creditors¹¹². A sufficient consideration exists in an agreement in which a number of stockholders have entered into to contribute a number of shares each, to be sold for the benefit of the corporation, and especially is this true, after the majority of them, in reliance on the agreement, have contributed their proportion¹¹³. Where one who bargains for the interest of an heir agrees also to pay the debts of the estate, a sufficient consideration is founded thereon for the full benefit the heir receives from the transfer of the interest¹¹⁴. If the object is made definite and certain, a mutual subscription for the benefit of an unincorporated church may be supported even though no payee is named. A sufficient consideration lies in the mutual promises of the subscribers¹¹⁵. It is in the necessary waiver of mortgage security that a sufficient consideration is found to support the agreement where a debtor and one who holds a mortgage on his property agree with a subsequent mortgagee that it should be put up at auction to satisfy the latter's claim¹¹⁶. A wife's release of her dower and homestead interest is a valuable consideration¹¹⁷. An agreement by A to forbear to sue C for a debt, and to extend the time of payment, is a sufficient consideration for a promise by B to pay to A what B owes C to the amount of the debt¹¹⁸.

110. *Parsons v. Frost*, 55 Mich. 230.

111. *Stanley v. Nye*, 54 Mich. 277.

112. *Loud v. Winchester*, 52 Mich. 174.

113. *Conrad v. La Rue*, 52 Mich. 83.

114. *Kennedy v. Shaw*, 43 Mich.

359.

115. *Allen v. Duffie*, 43 Mich. 1.

116. *Bradshaw v. McLoughlin*, 39 Mich. 480.

117. *Randall v. Randall*, 37 Mich. 568; *Bissell v. Taylor*, 41 Mich. 702; *Farwell v. Johnston*, 34 Mich. 342.

118. *Calkins v. Chandler*, 36 Mich. 320.

A valid consideration may be found in a written agreement whereby a husband, in consideration of the discontinuance of a divorce suit and of his wife's returning to him and in settlement of the difficulties between them, promised her five hundred dollars out of his estate beyond all claims she might have against it as his widow or under any will, such sum to be payable thirty days after his death¹¹⁹. A sufficient consideration to support a new arrangement may rest in a difficulty that has arisen in ascertaining the quantity of logs embraced in a written contract of sale in the manner provided for by the contract¹²⁰. The withdrawal of opposition to bankruptcy proceedings already begun, and consenting to amendments and an adjudication of bankruptcy, involves the surrender of valuable rights, and is therefore a valid consideration for an agreement between petitioning creditors and the defendants in bankruptcy¹²¹. The consideration is sufficient where one renders valuable services for another in his lifetime, under an understanding between them that he is to be compensated therefor in some way by a provision in the other's will or otherwise, though such understanding was not definite as to the mode of compensation, and a written agreement is afterwards made whereby the latter undertakes, in order to secure the payment for such services, to give the former a claim on a farm then in his possession, or the amount of one thousand dollars if he should die before he made a will¹²². For a payment or promise, even though the claim appears to be unfounded in law, a consideration is sufficient in the release or assignment of a claim to property where the claim is made in good faith, and the releasee or assignee knows what he is bargaining for, and is not deceived and therefore not defrauded¹²³. A valuable consideration rests in an agreement to refrain from prosecuting a debt against particular persons or property¹²⁴. When a pur-

119. *Reithmaier v. Beckwith*, 35 Mich. 110.

120. *Perkins v. Hoyt*, 35 Mich. 506.

121. *Sanford v. Huxford*, 32 Mich. 313.

122. *Sword v. Keith*, 31 Mich. 247.

123. *Sheldon v. Rice*, 30 Mich. 296.

124. *West v. Laraway*, 28 Mich. 464.

chaser under a contract has a right to decline receiving logs because below the average size to which he is entitled, and is induced to accept them by a promise that the deficiency shall be made good, the consideration is sufficient¹²⁵. A legal consideration may rest in a subscription by which several residents of an incorporated village agree to pay for levelling, fencing and planting with shade trees land dedicated as a public square¹²⁶. It is manifest that a consideration is sufficient by which several persons promise to pay the sum set opposite their names to provide a free dinner to soldiers, being for a meritorious object, and each subscription being an inducement to others to subscribe and pay their money¹²⁷. For an agreement on the part of the party accepting delivery to waive any claim for damages on account of the contract not having been fulfilled within the stipulated time, a sufficient consideration is the delivery of property manufactured in pursuance of the contract¹²⁸. An equitable title is as much property as a legal one, and will constitute a sufficient consideration for an agreement¹²⁹. A sufficient consideration is the interest of one joint finder of lost property for the other's agreement to sell it and divide the proceeds¹³⁰. Where a subscription is made to raise a fund for educational purposes, and something is done, or some liability or duty assumed, in reliance thereon, in order to carry out the object, the promise by the subscription is a sufficient consideration¹³¹. To sustain a promise, the consideration may consist in a *bona fide* claim, with a color of right, although there be in fact no right, so long as the party asserting it does not know he has no right, and acts in good faith¹³². A consideration for a note may rest in the circumstance under which an incorporated educational

125. *Ortman v. Green*, 26 Mich. 208.

126. *Corkins v. Collins*, 16 Mich. 478.

127. *Comstock v. Howd*, 16 Mich. 237.

128. *Moore v. Detroit Locomotive Works*, 14 Mich. 266.

129. *Holland v. Hoyt*, 14 Mich. 238; *Scott v. Bush*, 26 Mich. 418; *Miner v. O'Harrow*, 60 Mich. 91.

130. *Cummings v. Stone*, 13 Mich. 70.

131. *Underwood v. Waldron*, 12 Mich. 73.

132. *Gates v. Shutts*, 7 Mich. 127.

institution, upon the strength of subscription to its fund, erected buildings and expended a large sum in furtherance of the objects of its contributors; and after which a subscriber gave his note for his subscription, and received therefor a certificate, entitling him, his heirs and assigns, to an equal amount of "stock" in the institution, and also to the free tuition of one student therein¹³³. A sufficient consideration for an agreement by a new firm to see that the debts of the old firm are paid, is the actual surrender of a partner's interest in the firm to his co-partners and a third party, forming a new firm¹³⁴. An agreement by A in consideration of goods being mortgaged to B, that he would assure their delivery in case of non-payment (except those sold from day to day), and, in case of foreclosure and an inventory made, pay any deficit, provided that on due notice, the mortgagee may take possession, and A be discharged, is on sufficient consideration¹³⁵. A promise upon a condition to be performed by the other party becomes a valid consideration when the condition is performed¹³⁶. The compromise and settlement of an asserted claim, involved in legal controversy, be it never so doubtful, constitutes a sufficient consideration for the settlement, and for any obligation given by one party to the other in consummation of it¹³⁷. A sufficient consideration for an agreement to compromise and divide the land lies in the fact that where two parties claim the same land under conflicting titles, there is a doubt as to which title is valid¹³⁸. The extinguishment of a pre-existing debt is a valid and sufficient consideration for the transfer of a negotiable instrument¹³⁹. An agreement with defendant to forbear suit against a third person who was plaintiff's debtor is a good consideration for defendant's promise to pay the debt¹⁴⁰.

133. *Wesleyan Seminary v. Fisher*, 4 Mich. 516.

134. *Bonebright v. Pease*, 3 Mich. 318.

135. *Mills v. Spencer*, 2 Mich. 127.

136. *People v. Taylor*, 2 Mich. 250.

137. *Van Dyke v. Davis*, 2 Mich. 144.

138. *Weed v. Terry*, 2 Dougl. 344.

139. *Bostwick v. Dodge*, 1 Dougl. 413; *Cuthwite v. Porter*, 13 Mich. 533; *Ronald v. Kays*, 64 Mich. 439.

140. *Rood v. Jones*, 1 Dougl. 188.

CHAPTER VII.

STATUTE OF FRAUDS.

§125. Statute in General.

- (a) Memorandum.
- (b) Contents.
- (c) Manner of Execution.
- (d) Time of Execution.
- (e) Variations.
- (A) Agreements in Consideration of Marriage.
- (B) Promises by an Executor or Administrator.
- (C) Promises to Answer for the Debt, Default or Miscarriage of Another.
 - (a) Novation.
- (D) Representations.
- (E) Agreements Not to be Performed Within One Year.
- (F) Contracts for Land.
- (G) Contracts for the Sale of Goods.
- (H) Operation of Statute.
 - (a) Operation as to Rights and Remedies.
 - (b) Operation as to Interest Created Without Writing in Estates from Year to Year, Month to Month, or at Will.
 - (c) Validity of Oral Contracts and Conveyances Without Deed or Note in Writing.
 - (d) Enforcement of Oral Contracts in Equity.
 - (e) Promise Reduced to Writing.
 - (f) Collateral Contracts.
 - (g) Contracts Part Within Statute.
 - (h) Performed Within Statute.
 - (i) To Whom Statute Available.
 - (j) Contract as Ground for Equitable Relief.
 - (k) Tender as to Performance.
 - (l) Recovery for Use and Occupation.
 - (m) Recovery of Services.
 - (n) Services Rendered to Third Persons.
 - (o) Contracts to Convey or Devise Lands in Consideration of the Performance of Services.
 - (p) Contracts Implied by Law on Part Performance.
 - (q) Contracts Completely Performed.
 - (r) Contracts Performed in Part.
 - (s) Farol Modification of Written Instrument.
 - (t) Oral Contracts as Grounds of Defense.
 - (u) Contract as Measure of Damages.
- (I) Construction of Statutes.
- (J) Conflict of Laws.
- (K) Pleading.
- (L) Evidence.
- (M) Practice.

§125. Statute in General.

Under this statute, the law requires certain contracts and transfers of land to be reduced to writing, and signed by the parties to be charged therewith by their legal and duly authorized agents, in order to give proper legal binding force to them. Its object is to prevent misunderstandings, the facility to perpetrate frauds and the temptation to commit perjury in cases where the obligations are of such a nature that the evidence depends upon the unaided memories of witnesses. In this connection Justice Grear said: "Its policy is to impose such requisites upon private transfer of property, as without being hindrances to fair transaction, may be either totally inconsistent with dishonest practices, or tend to multiply the chances of detection¹."

The various sections of the Statute read as follows: C. L. '97, Chap. 258, Sec. 9515. In the following cases, specified in this section, every agreement, contract, and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof be in writing, and signed by the party to be charged therewith, or by some person by him thereunto lawfully authorized, that is to say:

1. Every agreement that, by its terms, is not to be performed in one year from the making thereof;
2. Every special promise to answer for the debt, default, or misdoings of another person;
3. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promises to marry;
4. Every special promise made by an executor or administrator to answer damages out of his own estate².

1. Purcell v. Miner, 4 Wall. (U. S.) 517.

2. C. L. '57, §3183; C. L. '71, §4698; H. S. §6185.

Memorandum. Bauman v. Manistee, etc. Co., 94 Mich. 365; Ayres v. Gallup, 44 Mich. 13; Hall v. Soule, 11 Mich. 494.

Memorandum must be complete within itself; Messmore v. Cunningham, 78 Mich. 623; Webster v.

Brown, 67 Mich. 331; Gault v. Stormont, 51 Mich. 638; McElroy v. Buck, 35 Mich. 434; James v. Muir, 33 Mich. 223; Palmer v. Marquette etc., Milling Co., 32 Mich. 274; Hall v. Soule, 11 Mich. 494.

Contracts not to be performed within one year: Deland v. Hall, 134 Mich. 381; Dietrich v. Hoefelmeir, 128 Mich. 145; Sacks v. Detroit, etc., R. Co., 125 Mich. 252.

§9516. No contract for the sale of any goods, wares or merchandise, for the price of fifty dollars, or more, shall be valid, unless the purchaser shall accept and receive part of the goods

Agreements void when not to be performed within one year. *Bristol v. Sutton*, 115 Mich. 365; *Whiting v. Ohlert*, 52 Mich. 463; *Doty v. Martin*, 32 Mich. 468; *Detroit, etc., R. Co. v. Forbes*, 30 Mich. 463; *Whipple v. Parker*, 29 Mich. 369.

Where an oral agreement may be performed within a year or may be terminated by a contingency before the expiration of the year, it is not within the statute. *Carr v. McCarthy*, 70 Mich. 256; *Donovan v. Richmond*, 61 Mich. 467; *Barton v. Gray*, 57 Mich. 634; *Whiting v. Ohlert*, 52 Mich. 462; *Sword v. Keith*, 31 Mich. 263; *Detroit, etc., R. Co. v. Forbes*, 30 Mich. 175. Promise to answer for debt of another: *Crawford v. Steel*, 137 Mich. 610; *Wolff v. Alpena National Bank*, 131 Mich. 634; *Ford v. McLane*, 131 Mich. 371; *Butters Salt and Lumber Co. v. Vogel*, 130 Mich. 33; *Holmes v. McAllister*, 123 Mich. 494; *Bristol v. Sutton*, 119 Mich. 693; *Martin v. Curtis*, 119 Mich. 189; *Temple v. Goldsmith*, 118 Mich. 172; *Wilhelm v. Voss*, 118 Mich. 106; *Goodman v. Felcher*, 116 Mich. 348; *Durgin v. Smith*, 115 Mich. 239; *Fuller & Rice Lumber, etc., Mfg. Co. v. Houseman*, 114 Mich. 276; *Wenzel v. Johnson*, 112 Mich. 243; *Stephen v. Yoemans*, 112 Mich. 624; *Pratt v. Bates*, 40 Mich. 39; *Scott v. Bush*, 26 Mich. 418; *Corkins v. Collins*, 16 Mich. 481; *Hall v. Soule*, 11 Mich. 497.

The sufficiency of the consideration for a promise to answer for the debt of another. *Pratt v. Bates*, 40 Mich. 39; *Calkins v. Chandler*, 36 Mich. 320; *Sanford v. Huxford*, 32 Mich. 313; *Waldo v. Simonson*, 18 Mich. 345; *Corkins v. Collins*, 16 Mich. 461; *Rood v. Jones*, 1 Doug. 188.

Where the promise is merely collateral to the promise of the principal debtor, the statute requires the promise to be in writing. *Dean v.*

Ellis, 608 Mich. 240; *McLaughlin v. Austin*, 104 Mich. 489; *Bryant v. Riche's Estate*, 103 Mich. 127; *Ramsdell v. Light and Power Co.*, 103 Mich. 93; *Mich. State Co. v. Ry. Co.*, 101 Mich. 14; *Grib v. Comstock*, 99 Mich. 530; *Campbell v. Barkley*, 90 Mich. 35; *Preston v. Zekind*, 84 Mich. 641; *Perkins v. Hershey*, 77 Mich. 504; *Roppe v. Paterson*, 67 Mich. 43; *Hake v. Solomon*, 62 Mich. 377; *Bates v. Johnson*, 57 Mich. 521; *Pfaff v. Cummings*, 57 Mich. 143; *Studley v. Barth*, 54 Mich. 6; *Roppe v. Edwards*, 52 Mich. 411; *Tozer's Estate*, 46 Mich. 299; *Preston v. Young*, 46 Mich. 103; *Bonine v. Denniston*, 41 Mich. 747; *Ingersoll v. Baker*, 41 Mich. 48; *Gower v. Stuart*, 40 Mich. 747; *Pratt v. Bates*, 40 Mich. 39; *Baker v. Ingersoll*, 39 Mich. 158; *Calkins v. Chandler*, 36 Mich. 320; *Barden v. Briscoe*, 36 Mich. 254; *Welch v. Marvin*, 36 Mich. 67; *Potter v. Brown*, 35 Mich. 374; *Hall v. Woodin*, 35 Mich. 67; *Webb v. Rowe*, 35 Mich. 58; *Halstead v. Francis*, 31 Mich. 113; *Green v. Brookins*, 23 Mich. 58; *Waldo v. Simonson*, 18 Mich. 345; *Hogsett v. Ellis*, 17 Mich. 362; *Corkins v. Collins*, 16 Mich. 478; *Gibbs v. Blanchard*, 15 Mich. 292; *Bresler v. Pendell*, 12 Mich. 224; *Huntington v. Wellington*, 12 Mich. 12; *Brown v. Hazen*, 11 Mich. 219; *Jones v. Palmer*, 1 Doug. 379.

When a promise is collateral and within the statute. *Waldo v. Simonson*, 18 Mich. 345; *Hogsett v. Ellis*, 17 Mich. 362; *Corkins v. Collins*, 16 Mich. 482.

A promise and undertaking need not be evidenced by writing, if the original debtor is discharged by the promise and undertaking of another made on sufficient consideration. *Boyer v. Soules*, 105 Mich. 35; *Sutherland v. Carter*, 52 Mich. 151; *Corkins v. Collins*, 16 Mich. 478; *Farwell v. Dewey*, 12 Mich. 436;

sold, or shall give something in earnest, to bind the bargain or in part payment, or unless some note or memorandum in writing of the bargain is made, and signed by the party to be charged thereby or by some person thereunto by him lawfully authorized³.

§9517. Whenever any goods shall be sold at auction and the auctioneer shall, at the time of sale, enter in a sale book a memorandum specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a memorandum of the contract of sale, within the meaning of the last section⁴.

§9518. No action shall be brought to charge any person upon or by reason of any favorable representation or assurance, made concerning the character, conduct, credit, ability, trade or dealings of any other person unless such representation or assurance be made in writing, and signed by the party to be charged

Jones v. Palmer, 1 Doug. 282.

Where credit was given the purchaser of the goods, a promise by another to pay for the goods is an original undertaking. Hagadorn v. Lumber Co., 81 Mich. 56; Heym v. O'Hagen, 60 Mich. 150; Morris v. Osterhout, 55 Mich. 262; Larsin v. Jensen, 53 Mich. 427.

Marriage agreements. Wood v. Savage, 2 Doug. 323.

Promise of Executors or Administrators, etc., Meade v. Bowles, 123 Mich. 696.

3. C. L. '57, §3184; C. L. '71, §4699; H. S. §6186. Underfeed, etc., Stoker Co. v. Detroit Salt Co., 135 Mich. 431; Gatiss v. Cyr, 134 Mich. 233; Dollavo v. Richardson, 134 Mich. 226; De Mary v. Burtenshaw's Estate, 131 Mich. 326; Butter's Salt and Lumber Co. v. Vogel, 130 Mich. 33; Dietrich v. Hoefelmeir, 128 Mich. 145; Brown v. Snider, 126 Mich. 198; Gorman v. Brossard, 120 Mich. 611; McCormick Harvesting Mach. Co. v. Cussack, 116 Mich. 647; Richards v. Burrows, 62 Mich. 120; Scotten v. Sutton, 37 Mich. 526.

As to ascertaining the sufficiency of the receipt and acceptance.

Hudson v. Emmons, 107 Mich. 549; Raasch v. Bissell, 52 Mich. 455; Brewer v. Michigan Salt Association, 47 Mich. 526; Iron Clipp Co. v. Buhl, 42 Mich. 86; Hart v. Summers, 38 Mich. 402; Wilkinson v. Holliday, 33 Mich. 386; Hahn v. Frederick, 30 Mich. 223; Hatch v. Fowler, 28 Mich. 205; Lingham v. Eggleston, 27 Mich. 329; Ortman v. Green, 26 Mich. 209; Adams Mining Co. v. Senter, 26 Mich. 73; First National Bank v. Crowley, 24 Mich. 492; Whitcomb v. Whitney, 24 Mich. 486; Alderton v. Buchoz, 3 Mich. 322.

As to joint acceptance. Webster v. Bailey, 40 Mich. 648; Grimes v. Van Vechten, 20 Mich. 413; Chamberlain v. Dowe, 10 Mich. 319.

As to payment of earnest money. Dooley v. Elbert, 47 Mich. 615.

As to what the terms "goods, wares and merchandise" include. Weston v. McDowell, 20 Mich. 358.

4. C. L. '57, §3185; C. L. '71, §4700; H. S. §6187.

thereby, or by some person thereunto by him lawfully authorized⁵.

§9519. The consideration of any contract, agreement or promise required by this chapter 258 to be in writing, need not be expressed in the written contract, agreement or promise or in any note or memorandum thereof, but may be proved by any other legal evidence⁶.

C. L. '97, Chap. 257, §9509. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing⁷.

5. *McNaughton v. Smith*, 136 Mich. 368; *Third National Bank of New York v. Steel*, 129 Mich. 434; *St. Johns National Bank v. Steel*, 125 Mich. 165; *Hubbard v. Long*, 105 Mich. 449; *Clark v. Hurd*, 79 Mich. 150; *Hess v. Culver*, 77 Mich. 602; *French v. Fitch*, 67 Mich. 492; *Bush v. Sprague*, 51 Mich. 41; *Lenheim v. Fay*, 27 Mich. 70; *Huntington v. Wellington*, 12 Mich. 14.

6. C. L. '57, §3187; C. L. '71, §4702; H. S. §6189. *Palmer v. Marquette*, etc., *Rolling Mill Co.*, 32 Mich. 274; *Detroit, etc., R. Co. v. Forbes*, 30 Mich. 175; *Hall v. Soule*, 11 Mich. 497; *Jones v. Palmer*, 1 Doug. 379.

7. C. L. '57, §3177; C. L. '71, §4692; H. S. §6179. Contracts that are null and void within this section. *Wright v. Dickinson*, 67 Mich. 580; *Wardell v. Williams*, 62 Mich. 50; *Raub v. Smith*, 62 Mich. 50; *Barton v. Gray*, 57 Mich. 635; *Lentz v. Railroad Co.*, 53 Mich. 444; *Kelly v. Kelly*, 54 Mich. 30; *Detroit, etc., R. Co. v. Forbes*, 30 Mich. 176; *Grimes v. Bechten*, 20 Mich. 410; *Chamberlain v. Dow*, 10 Mich. 319.

The purchase price may be recovered, where property has been conveyed under an agreement which is void under the statute. *Cadman v. Markel*, 76 Mich. 448; *Detroit, etc., R. Co. v. Forbes*, 30 Mich. 176; *Whipple v. Parker*, 29 Mich. 369; *Scott v. Bush*, 26 Mich. 418; *Holland v. Hoyt*, 14 Mich. 230.

All transfers of interests in land must be in writing. *Smalley v. Mitchell*, 110 Mich. 650; *Raub v. Smith*, 61 Mich. 549; *Jacobs v. Miller*, 50 Mich. 126; *Nims v. Sherman*, 43 Mich. 45; *Rawdon v. Dodge*, 40 Mich. 698; *Morrell v. Hackman*, 24 Mich. 284; *Enos v. Sutherland*, 11 Mich. 541.

A parol estoppel does not affect the transfer of lands. *Stevens v. Muskegon City*, 111 Mich. 72; *Huyck v. Bailey*, 100 Mich. 223; *Wood v. Railroad Co.*, 90 Mich. 334; *Nims v. Sherman*, 43 Mich. 52; *Hayes v. Livingston*, 54 Mich. 384; *Wright v. De Groff*, 14 Mich. 164.

As to sale of standing timber. *Spalding v. Archibald*, 52 Mich. 365; *Sovereign v. Ortman*, 47 Mich. 161; *Wetmore v. Newberger*, 44 Mich.

§9510. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising, or being extinguished, by implication or operation of law⁸.

§9511. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized by writing⁹.

366; *Haskell v. Ayres*, 55 Mich. 89; *Greeley v. Stillson*, 29 Mich. 153; *Wetherbee v. Green*, 22 Mich. 311.

The purpose of this statute is to preclude parties from asserting equitable interests in lands where they must rest upon parol evidence in opposition to the written instruments of title which have been made by their consent and approval. *Douglas v. Douglas*, 72 Mich. 99.

Parol contracts from the sale of land must be in writing or evidenced by some writing. *Bartlett v. Bartlett*, 103 Mich. 296; *Ducott v. Wolf*, 81 Mich. 312; *McDonald v. Maltz*, 78 Mich. 685; *Wardell v. Williams*, 62 Mich. 55; *Dickinson v. Wright*, 52 Mich. 46; *Kelly v. Kelly*, 54 Mich. 30; *De Moss v. Robinson*, 46 Mich. 62; *Jacks v. Evans*, 44 Mich. 510; *Sutton v. Rowley*, 44 Mich. 112; *Ayres v. Gallup*, 44 Mich. 12; *Nims v. Sherman*, 43 Mich. 50; *Hillibrands v. Nibelink*, 40 Mich. 641; *Curtis v. Abbe*, 29 Mich. 441; *Liddle v. Needham*, 39 Mich. 147; *Colgrove v. Solomon*, 34 Mich. 499; *Scott v. Bush*, 26 Mich. 418; *Palmer v. Williams*, 24 Mich. 331; *Abell v. Munson*, 18 Mich. 312; *Hogsett v. Ellis*, 17 Mich. 364; *Climmer v. Hovey*, 15 Mich. 22; *Holland v. Hoyt*, 14 Mich. 242; *Wright v. DeGroff*, 14 Mich. 164; *Bomier v. Caldwell*, 8 Mich. 468; *Dwight v. Cutler*, 3 Mich. 573.

A written contract or memoran-

dum of the sale of property must be clear, definite and complete. *Brown v. Brown*, 47 Mich. 384; *Lamb v. Hineman*, 46 Mich. 116; *Ritson v. Dodge*, 31 Mich. 463; *Caswell v. Gibbs*, 33 Mich. 331; *Twiss v. George*, 33 Mich. 255; *Wright v. Wright*, 31 Mich. 380; *Blanchard v. Railroad Co.*, 21 Mich. 53; *McClintock v. Laing*, 22 Mich. 217; *Munsell v. Loree*, 21 Mich. 487; *Mowrey v. Vandling*, 9 Mich. 39; *Ramsdell v. Miller*, Har. 373; *McMurtrie v. Bennette*, Har. 126; *Burtch v. Hogge*, Har. 31.

As to description of premises and price. *Eggleston v. Wagner*, 46 Mich. 518; *Munsell v. Loree*, 21 Mich. 497; *Bomier v. Caldwell*, 8 Mich. 468.

As to time, place and mode of payment. *Crane v. Wasey*, 45 Mich. 228; *Moote v. Scriven*, 33 Mich. 502; *Kimball v. Goodbury*, 32 Mich. 10; *Converse v. Blumrich*, 14 Mich. 109; *Richmond v. Robinson*, 12 Mich. 193; *Morris v. Hoyt*, 11 Mich. 9; *Shaver v. Niver*, 9 Mich. 263; *Bomier v. Caldwell*, 8 Mich. 468; *Ingersoll v. Horton*, 7 Mich. 405; *Wallace v. Pidge*, 4 Mich. 570.

8. C. L. '57, §3178; C. L. '71, §4693; H. S. §6180. *Ripley v. Seligman*, 88 Mich. 192; *Gugins v. Van Gordon*, 10 Mich. 192.

9. C. L. '57, §3179; C. L. '71, §4694; H. S. §6181.

Where one enters into a verbal

§9512. The consideration of any contract or agreement, required by the provisions of this chapter to be in writing, need not be set forth in the contract or agreement, or in the note or memorandum thereof, but may be provided by any other legal evidence¹⁰.

§9513. Nothing in this chapter 258 contained shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements, in cases of part performance of such agreements¹¹.

§9534. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in

agreement to purchase land for another, the statute is applicable. *Raub v. Smith*, 51 Mich. 547; *Carr v. Leavitt*, 54 Mich. 540; *DeMoss v. Robinson*, 46 Mich. 62; *Wetmore v. Newberger*, 44 Mich. 362; *Scott v. Bush*, 26 Mich. 418; *Abell v. Munson*, 18 Mich. 312; *Hogsett v. Ellis*, 17 Mich. 364; *Bomier v. Caldwell*, 8 Mich. 463; *Dwight v. Cutler*, 3 Mich. 573.

Where the purchaser's signature is attached to a written document by another and by his direction, authority in writing is not necessary. *Eggleston v. Wagner*, 46 Mich. 618; *Johnson v. Van Velsor*, 43 Mich. 218; *Just v. Wise Twp.*, 42 Mich. 577.

Where an agent signs for the vendor or lessor, written authority is required. *Colgrove v. Solomon*, 34 Mich. 494; *Power v. Conant*, 33 Mich. 398; *Palmer v. Williams*, 24 Mich. 331; *Hammond v. Hannin*, 21 Mich. 382.

10. C. L. '57, §3189; C. L. '71, §4695; H. S. §6182. *Scott v. Bush*, 26 Mich. 420.

11. C. L. '57, §3190; C. L. '71, §4696; H. S. §6183. *Michigan Central R. Co. v. Chicago, etc., R. Co.*, 132 Mich. 324; *Gerber v. Upton*, 123 Mich. 605; *Sherer v. Gibson*, 123 Mich. 467; *Hallett v. Gordon*, 122 Mich. 567; *Pike v. Pike*, 121 Mich. 170; *Oconto Co. v. Lundquist*, 119 Mich. 264; *Chapman v. Chapman*,

118 Mich. 144; *Dickinson v. Wright*, 56 Mich. 46; *Griley v. Burkholder*, 41 Mich. 749; *Liddle v. Needham*, 39 Mich. 147; *Holland v. Hoyt*, 14 Mich. 147.

As to making valid void contracts by part performance: *Waldron v. Laird*, 65 Mich. 237; *Miner v. O'Haro*, 60 Mich. 91; *Fuller v. Rice*, 52 Mich. 485; *Spalding v. Archibald*, 52 Mich. 365; *Davis v. Strowbridge*, 44 Mich. 157.

As to purchase money paid on oral agreement may be recovered. *DeMoss v. Robinson*, 46 Mich. 62; *Davis v. Strowbridge*, 44 Mich. 159; *Nims v. Sherman*, 43 Mich. 50; *Colgrove v. Solomon*, 34 Mich. 494; *Scott v. Bush*, 26 Mich. 418.

As to what one must show to be entitled to specific performance: *In re Williams Estate*, 106 Mich. 502; *Bartlett v. Bartlett*, 103 Mich. 296; *Messmore v. Cunningham*, 78 Mich. 623; *Murphy v. Stever*, 47 Mich. 522; *Davis v. Strowbridge*, 44 Mich. 157; *Kinyon v. Young*, 44 Mich. 341.

As to power of courts of chancery to enforce specific performance of oral agreements to convey real estate. *Kent Furniture Co. v. Long*, 111 Mich. 383; *Putnam v. Tinkler*, 83 Mich. 628; *Taft v. Taft*, 73 Mich. 502; *Welch v. Whelpley*, 62 Mich. 15; *Fairfield v. Barbour*, 51 Mich. 57; *Lamb v. Hinnman*, 46 Mich. 112; *Kinvon v. Young*, 44 Mich. 339; *Twiss v. George*, 33 Mich. 253.

writing and signed by the party making the same, or by his agent lawfully authorized, shall be void¹².

§9538. The term "Conveyance," as used in this and the preceding eightieth chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be the form of such instrument, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered¹³.

§9740. In actions founded upon contract expressed or implied, no acknowledgment or promise shall be evidence of a continuing contract whereby to take a case out of the provisions of this chapter (258) or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing, signed by the party to be charged thereby¹⁴.

(a) *Memorandum.*

A uniform provision of the statute is that a contract does not fall within the operation of the statute of frauds, if there is some note or memorandum in writing signed by the party to be charged therewith, but it is only requisite and necessary that a written memorandum exists between the parties to the contract. They are the only ones who can object to the sufficiency.

The form of words in which the contract is clothed is not essential. It may be a writing of the most solemn, or of the most trivial type—a hasty note or memorandum, in books, in letters or on papers will be sufficient as long as it shows the intention of the parties. Whether written with pencil, ink or typewriter makes no difference, the contract is valid, provided all the essential terms thereof are expressed with such certainty

12. C. L. '57, §3199; C. L. '71, §4714; H. S. §6204. *Clay v. Layton*, 134 Mich. 317; *Smith v. Marsh*, 131 Mich. 407; *Hamilton v. Wickson*, 131 Mich. 71; *Williams v. Williams*, 118 Mich. 477; *Eipper v. Benner*, 113 Mich. 75; *Cobb v. Cook*, 49 Mich. 11.

13. C. L. '57, §3202; C. L. '71,

§4718; H. S. §6208.

14. C. L. '57, §5373; C. L. '71, §7160; H. S. §8725. *Hillebrands v. Nibbelink*, 40 Mich. 646; *Jewett v. Petit*, 4 Mich. 510; *Ten Eyck v. Wing*, 1 Mich. 47; *Atwood v. Gillett*, 2 Doug. 213; *Joy v. Thompson*, 1 Doug. 393.

that they may be understood from the instrument itself or from some other writing to which it refers and contains all the legal elements of contract¹⁵. Thus, the memorandum or writing must contain all the essential elements of contract, with the exception of consideration¹⁶, i. e., competent parties properly identified, the subject-matter involved, the assent and the terms and conditions upon which the contract was consummated. The general principle is well established that a complete and binding contract may be created by letters or other writings relating to one connected transaction, if, without the aid of parol testimony, the parties, the subject-matter, and the terms and conditions of the contract may be collected¹⁷. It is apparent then that any kind of document or documents taken separately or conjointly will meet the requirements of a contract provided they contain the essential elements necessary to a valid contract.

(b) *Contents.*

The contents of the memorandum must show the subject-matter¹⁸, the parties¹⁹, the consideration²⁰, the price²¹, the terms

15. Proctor v. Plummer, 112 Mich. 393; Messmore v. Cunningham, 78 Mich. 623; Webster v. Brown, 67 Mich. 328; Gault v. Stormont, 51 Mich. 636; Hall v. Soule, 11 Mich. 494.

16. C. L. '97, §§9512, 9519. Palmer v. M. & P. R. N. Co., 32 Mich. 274; D., H and I. R. R. Co. v. Forbes, 30 Mich. 175; Hall v. Soule, 11 Mich. 497; Jones v. Palmer, 1 Doug. 379; Whipple v. Parker, 29 Mich. 369; Camp v. Scofield, 75 Mich. 449; Orr v. Kenny, 150 Mich. 159.

17. Stevens v. City of Muskegon, 111 Mich. 72; Francis v. Barry, 69 Mich. 311; James v. Miner, 33 Mich. 223. Separate writings must refer to each other and parol evidence is inadmissible to connect writing. New York Third National Bank v. Steel, 129 Mich. 434; Moll v. Smith, 132 Mich. 618; Droll v. Diamond Match Co., 113 Mich. 196; Proctor v.

Plummer, 112 Mich. 393; Stevens v. City of Muskegon, 111 Mich. 72; In letters: Delaware, etc., Canal Co. v. Roberts, 72 Mich. 49; Francis v. Barry, 69 Mich. 311; Sheley v. Whitman, 67 Mich. 311; In a receipt: Gault v. Stormont, 51 Mich. 636.

18. Cummers v. Butts, 40 Mich. 322; Delaware & H. Canal Co. v. Roberts, 72 Mich. 49; Francis v. Barry, 69 Mich. 311; Sheley v. Whitman, 67 Mich. 397; Sherwood v. Walker, 66 Mich. 505, 11 Am. St. Rep. 531; Heffron v. Armsby, 61 Mich. 505; James v. Muir, 33 Mich. 223.

19. Toledo & S. H. Ry. Co. v. Lamphear, 54 Mich. 575; Kaufman v. Burton, 144 Mich. 487.

20. Whipple v. Parker, 29 Mich. 369; Camp v. Scofield, 75 Mich. 449.

21. James v. Muir, 33 Mich. 223. Price cannot be fixed by parol evidence. Supra. Messmore v. Cunningham, 78 Mich. 623; Webster v. Brown, 67 Mich. 328.

and conditions²² and, if land is involved, the description²³.

(c) *Manner of execution.*

Acceptance binds the party whose signature does not appear in the memorandum²⁴. Written authority to contract for the sale of land is necessarily essential in order to comply with the statute²⁵. The authority of an agent to execute a written contract for the sale of lands, may be shown by an oral ratification; and the acts of the principal, from which such ratification may be inferred, are competent evidence for that purpose²⁶.

(d) *Time of execution.*

The execution of a memorandum, note or writing may take place any time subsequent to the formation of the contract and before commencement of an action²⁷.

(e) *Variations.*

Parol additions or variations to memorandum are not permissible²⁸ but there are limitations²⁹.

A. *Agreements in consideration of marriage.*

A parol ante-nuptial promise, by a husband, to hold money

22. Webster v. Brown, 67 Mich. 328. Presumption of reasonable time. Moll v. Smith, 136 Mich. 613. The contract entered into by the parties must appear on its face. Brown v. Snider, 126 Mich. 198; Sherwood v. Walker 66 Mich. 568; Messmore v. Cunningham, 78 Mich. 618; Gault v. Stormont, 51 Mich. 636; McElroy v. Burk, 35 Mich. 434; Palmer v. Marquette Pacific Rolling Mill Co., 32 Mich. 274; Hall v. Soule, 11 Mich. 494.

23. Eggleston v. Wagner, 46 Mich. 610; Francis v. Barry, 69 Mich. 311; Alpena Lumber Co. v. Fletcher, 48 Mich. 555.

24. Moll v. Smith, 132 Mich. 618. Broker as agent of both parties: Heffron v. Armsby, 61 Mich. 505. Written acceptance: Upham v. Clute, 105 Mich. 350; Pfaff v. Cummings, 67 Mich. 143; Preston v. Young, 46 Mich., 103; Elliott v. Miller, 8 Mich. 132. Signature: Co-Operative Telephone Co. v. Katus, 140 Mich. 367, 112 Am. St. Rep. 414; Brown v. Snyder, 126 Mich. 198;

Ducett v. Wolf, 81 Mich. 311; Wilkinson v. Heavenrich, 58 Mich. 574. Signed by agent: Detroit P. & N. Ry. Co. v. Hertz, 147 Mich. 354; Stuart v. Mattern, 141 Mich. 686; De Mary v. Burtenshaw's Estate, 131 Mich. 326; Baldwin v. Schiappacasse, 109 Mich. 170; Eggleston v. Wagner, 46 Mich. 610; Hammond v. Hannin, 21 Mich. 374, 4 Am. Rep. 490.

25. Baldwin v. Schiappacasse, 109 Mich. 170; Dickinson v. Wright, 56 Mich. 42; Hammond v. Hannin, 21 Mich. 374.

26. McIntosh v. Hodges, 110 Mich. 319.

27. Dickinson v. Wright, 56 Mich. 42; White v. Cleavor, 75 Mich. 17. Memorandum made after breach of contract. Wilkinson v. Heavenrich, 58 Mich. 574.

28. Messmore v. Cunningham, 78 Mich. 623. Webster v. Brown, 67 Mich. 328; Hall v. Soule, 11 Mich. 494.

29. Miller v. Tanner's Supply Co., 150 Mich. 293.

belonging to his wife at the time of marriage, as her trustee, and invest it in real estate in her name and for her separate use, could not be given in evidence to sustain a post-nuptial settlement upon the wife, as against creditors; such promise being founded solely upon the consideration of marriage, and therefore within the statute of frauds³⁰.

B. Promises by an executor or administrator.

This subdivision of the statute is substantially related to the subsequent subdivision, although the principles involved are not identical, yet the reasoning underlying the principles is the same and applicable to the interpretation of both subdivisions. The oral agreement of an administrator to pay for legal services rendered in proceedings instituted by him in behalf of the estate does not fall within the statute of frauds, where the credit is extended to him personally, even though he can receive no benefit from the litigation³¹.

C. Promises to answer for the debt, default or miscarriage of another.

The general rule is well stated in the subdivision of the statute, but the application depends upon the nature of the debt³², default or miscarriage³³, the liability of the original debtor³⁴ and the kind of promise³⁵. If A. owes B., and C. promises A. upon

30. Wood v. Savage, 2 Doug. 316.

31. Meade v. Bowles, 123 Mich. 696.

32. Gibbs v. Blanchard, 15 Mich. 292; P. Hoffmaster's Sons Co. v. Hodges, 154 Mich. 641.

33. Green v. Brookins, 23 Mich. 48, 9 Am. Rep. 74; In re Toser's Estate, 46 Mich. 299; Bristol v. Sutton, 119 Mich. 693.

Pre-existing debt: Crawford v. Steel, 137 Mich. 610; Dumanoise v. Townsend, 80 Mich. 302; Comstock v. Norton, 36 Mich. 277; Davis v. Dodge, 30 Mich. 267.

34. Hagadorn v. Stronach Lumber Co., 81 Mich. 56; Heyn v. O'Hagen, 60 Mich. 150; Morris v. Osterhout, 55 Mich. 262; Larson v.

Jensen, 53 Mich. 427.

35. Draggio v. West Bay City Sugar Co., 144 Mich. 195; Holmes v. McAllister, 123 Mich. 493; Goodman v. Fletcher, 116 Mich. 348; Dean v. Ellis, 108 Mich. 240; McLaughlin v. Austin, 104 Mich. 489; Bryant v. Rich's Estate, 103 Mich. 127; Ramsdell v. L. & P. Co., 103 Mich. 93; Michigan State Co. v. Railroad Co., 101 Mich. 14; Grieb v. Comstock, 99 Mich. 520; Sweet v. Colleton, 96 Mich. 391; Chappel v. Barkley, 90 Mich. 35; Preston v. Zekind, 84 Mich. 641; Perkins v. Hershey, 77 Mich. 504; Bush v. Haynes' Estate, 76 Mich. 397; Ruppe v. Peterson, 67 Mich. 437; Hake v. Solomon, 62 Mich. 377; Schoch v.

a sufficient consideration that he will pay B, this contract is not within the statute of frauds, neither is the contract where A.

McLane, 62 Mich. 454; Colbourn v. First Baptist Church and Society of Monroe, 60 Mich. 198; Bates v. Johnson, 57 Mich. 521; Pfaff v. Cummings, 57 Mich. 143; Studley v. Barth, 54 Mich. 6; Ruppe v. Edwards, 52 Mich. 411; Wagner v. Eggleston, 49 Mich. 218; *In re Tozers' Estate*, 46 Mich. 299; Preston v. Young, 46 Mich. 103; Bonine v. Dennison, 41 Mich. 292; Ingersoll v. Baker, 41 Mich. 48; Gower v. Stuart, 40 Mich. 747; Pratt v. Bates, 40 Mich. 39; Baker v. Ingersoll, 39 Mich. 158; Calkins v. Chandler, 36 Mich. 320; Barden v. Briscoe, 36 Mich. 254; Welch v. Marvin, 36 Mich. 59; Potter v. Brown, 35 Mich. 274; Hall v. Woodin, 35 Mich. 67; Webb v. Rowe, 35 Mich. 58; First National Bank v. Bennett, 33 Mich. 520; Halstead v. Francis, 31 Mich. 113; Green v. Brookins, 23 Mich. 52; Waldo v. Simonson, 18 Mich. 345; Corkins v. Collins, 16 Mich. 478; Gibbs v. Blanchard, 15 Mich. 292; Bresler v. Pendell, 12 Mich. 224; Huntington v. Wellington, 12 Mich. 12; Brown v. Hazen, 11 Mich. 219; Jones v. Palmer, 1 Doug. 379.

Promises of an original or collateral nature: Hillman v. Hulett, 149 Mich. 289; Reelman v. Grospend, 140 Mich. 681; Butter's Salt and Lumber Co. v. Vogel, 130 Mich. 33; Foster, Charles & Ewen Co. v. Felcher, 119 Mich. 353; Temple v. Goldsmith, 118 Mich. 172; Wilhelm v. Voss, 118 Mich. 106; Fuller & Rice Lumber and Mfg. Co. v. Houseman, 114 Mich. 275; Wenzel v. Johnson, 112 Mich. 243; Boyer v. Soules, 105 Mich. 35; Hagadorn v. Lumber Co., 81 Mich. 56; Perkins v. Hershey, 77 Mich. 504; Heyn v. O'Hagen, 60 Mich. 150; Morris v. Osterhout, 55 Mich. 262; Larsen v. Jensen, 53 Mich. 430; Sutherland v. Carter, 52 Mich. 151; Preston v. Young, 46 Mich. 103; Gower v. Stuart, 40 Mich. 747; Pratt v. Bates, 40 Mich. 38; Baker v. Ingersoll, 39 Mich. 158; Welch v. Marvin, 36

Mich. 59; Calkins v. Chandler, 36 Mich. 324; Comstock v. Norton, 36 Mich. 277; Potter v. Brown, 35 Mich. 274; Hall v. Woodin, 35 Mich. 67; Davis v. Dodge, 30 Mich. 267; Green v. Brookins, 23 Mich. 52; Waldo v. Simonson, 18 Mich. 345; Corkins v. Collins, 16 Mich. 482; Gibbs v. Blanchard, 15 Mich. 300; Jones v. Palmer, 1 Doug. 382.

Promises as to bills and notes and their transfer. Bryant v. Rich's Estate, 104 Mich. 124; Upham v. Clute, 105 Mich. 350; Pfaff v. Cummings, 67 Mich. 143; Preston v. Young, 46 Mich. 103, 41 Am. Rep. 148; Halstead v. Miller, 31 Mich. 113; Huntington v. Wellington, 12 Mich. 10; Elliott v. Miller, 8 Mich. 132; Thomas v. Dodge, 8 Mich. 51; Jones v. Palmer, 1 Doug. 379.

Promises as to giving credit: McLaughlin v. Austin, 104 Mich. 489; Bauman v. Manistee Salt & Lumber Co., 94 Mich. 362; Dupuis v. Interior Const. & Imp. Co., 88 Mich. 103; Franks v. Stevens, 82 Mich. 192; Hagadorn v. Stronach Lumber Co., 81 Mich. 56; Hake v. Solomon, 62 Mich. 377; Bates v. Donnelly, 57 Mich. 521; Morris v. Osterhout, 55 Mich. 262; Larson v. Jensen, 53 Mich. 427; Barden v. Briscoe, 36 Mich. 254; Welch v. Marvin, 36 Mich. 59; Gibbs v. Blanchard, 15 Mich. 292; Farwell v. Dewey, 18 Mich. 436; Bresler v. Pendell, 12 Mich. 224.

Promises as to indemnity: Boyer v. Soules, 105 Mich. 31; Studley v. Barth, 54 Mich. 6; Ruppe v. Edwards, 52 Mich. 411; Bonine v. Denniston, 41 Mich. 295; Ingersoll v. Baker, 41 Mich. 48; Stall v. Woodin, 35 Mich. 67; Potter v. Brown, 35 Mich. 274; First National Bank v. Bennett, 33 Mich. 520; Huntington v. Wellington, 12 Mich. 15; Brown v. Hazen, 11 Mich. 219; Hall v. Soule, 11 Mich. 494; Thomas v. Dodge, 8 Mich. 51; Bonebright v. Peace, 3 Mich. 318; Dayton v. Williams 2 Doug. 325; Jones v.

promises, in consideration that B. becomes a member of A's Company by subscribing for a number of shares and in payment of which he is to give his note, to pay the latter³⁶. An express promise to pay for the goods bought by another is an original promise and rests upon a sufficient consideration so as to take it out of the statute³⁷. A promise is a collateral promise, when made simultaneously with, or previous to, the promise creating the debt guaranteed by it; as when A. trusts B., not upon B's promise only, but upon his promise and that of a third person,

Palmer, 1 Doug. 379.

Promises to apply or pay out of debtor's funds or property: Wolff v. Alpena Nat. Bank, 131 Mich. 634; Gleason v. Fitzgerald, 105 Mich. 516; Bice v. Marquette Opera House Bldg. Co., 96 Mich. 24; Mitts v. McMorran, 64 Mich. 664; Calkins v. Chandler, 36 Mich. 320, 24 Am. Rep. 593.

Promise to pay promisee's debts: Pratt v. Bates, 40 Mich. 37; Comstock v. Norton, 36 Mich. 277; Green v. Brookins, 23 Mich. 48.

Promise to pay promisor's debts: Bryant v. Rich's Estate, 104 Mich. 124; Dumanoise v. Townsend, 80 Mich. 308; Calkins v. Chandler, 36 Mich. 320.

Promise as to discharge of debtor: Green v. Solomon, 80 Mich. 234; Perkins v. Hershey, 77 Mich. 504; Ruppe v. Peterson, 67 Mich. 437; Pfaff v. Cummings, 67 Mich. 143; Mulcrone v. American Lumber Co., 55 Mich. 622; Gower v. Stuart, 40 Mich. 747; Baker v. Ingersoll, 39 Mich. 158; Calkins v. Chandler, 36 Mich. 320, 24 Am. Rep. 593; Welch v. Marvin, 36 Mich. 59; Hogsett v. Ellis, 17 Mich. 351; Brown v. Hazen, 11 Mich. 219.

Promise based upon a new consideration to the benefit of the promisor: Fuller and Rice Lumber & Mfg. Co. v. Houseman, 117 Mich. 553; Durgin v. Smith, 115 Mich. 239; Stephen v. Yeomans, 112 Mich. 624; Stewart v. Jerome, 71 Mich. 201; Ruppe v. Peterson, 67 Mich. 437; Studley v. Barth, 54 Mich. 6;

Waldo v. Simonson, 18 Mich. 345.

Promise of relinquishments without benefit to promisor: Corkins v. Chandler, 16 Mich. 482.

Promise not made by subcontractor: Temple v. Goldsmith, 118 Mich. 172.

Promises made by subcontractor: Wilhelm v. Voss, 118 Mich. 106; McLaughlin v. Austin, 104 Mich. 489.

A subcontractor abandons his contract and the owner of the building then, in consideration of his resumption and completion of the work, promises orally not only to pay for all future supplies and labor, but for all labor and supplies that are due under the original contract. A promise of this nature is valid as to the question of the money due on the original contract, if the original contract is discharged from the existing liability. Bice v. Marquette Opera House Bldg. Co., 96 Mich. 24; Michigan Slate Co. v. Iron Range, etc. R. Co., 101 Mich. 14; McLaughlin v. Austin, 104 Mich. 489 hold similarly but not with such qualification.

Promises as to whether they are questions of law or fact: Foster, etc. Co. v. Fletcher, 119 Mich. 353; Wenzel v. Johnston, 112 Mich. 262; Hagadorn v. Stronach Lumber Co., 81 Mich. 56; Hake v. Solomon, 62 Mich. 377; Morris v. Osterhout, 55 Mich. 262; Larsen v. Jensen, 53 Mich. 427; Hall v. Woodin, 35 Mich. 67; Gibbs v. Blanchard, 15 Mich. 292. 36. Green v. Brookins, 23 Mich. 48. 9 Am. St. Rep. 74.

37. Larsen v. Jensen, 53 Mich. 427.

as C., who, at the same time promises to pay A., in case B. fails to pay him. The statute has no reference to a separate, independent promise made subsequently to the creation of the debt, and for a new consideration. The two promises must have a simultaneous origin, and spring from the same root. They must be twin contracts. Where A. trusts B., and C. afterwards, for a new consideration moving from A., promises to pay what B. is owing him, if he cannot collect it of B., the undertaking is an original, independent contract, not within the statute. It is a guaranty of a pre-existing debt, and not a guaranty having its origin in the creation of a debt or duty guaranteed, which is the promise meant by the statute. When the promise has its origin in the creation of the debt or duty, the consideration that supports one supports the other. When it does not so originate, but is made subsequently, the consideration of the debt or duty will not support the promise, but there must be a new consideration to give it effect, and the promise is then said to be an original, independent promise, not within the statute³⁸. If B. promises C. to pay for work which he did and is doing for A. in consideration that B. receives a benefit therefrom, and not for the purpose of securing credit for A. the contract is not within the statute, and B. is not liable, but if B. is at all liable he is liable for the full amount regardless of A's liability³⁹. The rule has been stated to be that where a party who was not before liable, makes an express promise to pay a debt of a third person, and as a part of the agreement, the original debtor is discharged from his indebtedness, the agreement is not within the statute⁴⁰. An express promise of one party to a creditor to pay the debt of a debtor, the original debts not being discharged and no consideration whatever moving from the creditor to the promisor, is a promise within the statute and must be in writing in order

38. *Huntington v. Wellington*, 12 Mich. 10; *Saginaw Milling Co. v. Mower*, 154 Mich. 620.

39. *Mitchell v. Beck*, 88 Mich.

342.

40. *Mulcrone v. American Lumber Co.*, 55 Mich. 624.

to be valid⁴¹. The rule is well established that a promise must be in writing where a creditor agrees with his debtor to give him time in consideration of security for payment at a future day⁴². The rule is well established that a promise to answer for the debt of another based upon a new consideration beneficial to the promisor must be in writing and is within the statute. Where A. and C. are creditors of B., A. promises C. to pay B's debt to C. in consideration of C's forbearance to attach property in which B. has an interest, the promise falls within the statute⁴³.

(a) *Novation.*

Novation is a contract consisting of two stipulations, one to extinguish an existing debt or obligation; the other to substitute a new one in its place. To constitute novation, it is essential that there is an agreement to which there are three parties, A., B. and C. A. promises to pay B. a debt owing to him by C., in consideration of C's release of a claim against A⁴⁴.

D. *Representations.*

This statute, which was originally passed in England for the main purpose of exempting persons from being charged upon parol representations concerning the credit and ability of others or in other words, preventing the recovery on verbal representations in evasion of the statute, applies to verbal promises to pay the debt of another and for the purpose of placing promises and representations on a similar basis, applies only to cases where the representations form no part of the contract⁴⁵.

41. *Halstead v. Francis*, 31 Mich. 113; *Pratt v. Bates*, 40 Mich. 37; *Brown v. Hazen*, 40 Mich. 37; *Sherman v. Alberts*, 153 Mich. 361.

42. *Pratt v. Bates*, 40 Mich. 37.

43. *Waldo v. Simonson*, 18 Mich. 345.

44. *Martin v. Curtis*, 119 Mich. 169.

45. *Hicks v. Steel*, 142 Mich. 292, 4 L. R. A. (N. S.) 279; *McDonald v. Smith*, 139 Mich. 211; *St. Johns Nat. Bank v. Steel*, 135 Mich. 165; *Hubbard v. Long*, 105 Mich. 442; *Clark v. Hurd*, 79 Mich. 130; *Hess*

v. Culver, 77 Mich. 492; *French v. Fitch*, 67 Mich. 492; *Daniel v. Robinson*, 66 Mich. 296; *Bush v. Sprague*, 51 Mich. 41; *Lenhein v. Fay*, 27 Mich. 70; *Huntington v. Wellington*, 12 Mich. 10.

Representations in execution of a conspiracy: *Clark v. Hurd*, 79 Mich. 130; *Hess v. Culver*, 77 Mich. 598; *Bush v. Sprague*, 51 Mich. 41.

Representations as to corporations: *Bush v. Sprague*, 51 Mich. 41.

Conduct producing false impression: *Bush v. Sprague*, 51 Mich. 41.

E. Agreements not to be performed within one year.

All the provisions, such as promises to answer for the debt, default or miscarriage of another, all agreements made upon consideration of marriage, all contracts for an interest in real estate, and all bargains for goods, wares and merchandise relate to the subject-matter of the contract, while the agreements not to be performed in one year relate to the period of performance. This provision only applies to contracts which by their terms are not to be performed within a year from the making thereof, and not to agreements which in the absence of express stipulations to the contrary, may possibly or probably not be performed within the year, or which depend upon a contingency that may happen within the year⁴⁶. A contract that, in consideration that the plaintiff would procure the defendant to be admitted as a partner in a joint venture with one-fourth interest therein, and in the business to be carried on and the profits to be made by it, the latter would, at the end of three years, pay whatever the business, as then developed, would show the said one-fourth was fairly worth when the contract was entered into, is within the statute, and no action can be maintained upon it unless made in writing⁴⁷. An agreement to employ one so long as his services are satisfactory may be performed within one year, and need not, therefore, be in writing⁴⁸.

Where corporation obtained money: Hubbard v. Long, 105 Mich. 442.

Representations must relate to existing or past facts: Hubbard v. Long, 105 Mich. 442.

46. Barton v. Gray, 57 Mich. 622, 48 Mich. 164; Adams v. Harrington Hotel Co., 154 Mich. 198; Huron v. Raupp, 156 Mich. 162.

47. Whipple v. Parker, 29 Mich. 369. Within the statute. McIlroy v. Richards, 148 Mich. 694; Co-Operative Telephone Co. v. Katus, 140 Mich. 367; DeLand v. Hull, 134 Mich. 281; Dietrich v. Hoefelmeir, 128 Mich. 145; Davis v. Michigan Mut. Life Ins. Co., 127 Mich. 559;

Bristol v. Sutton, 115 Mich. 365; Hand v. Osgood, 107 Mich. 55; Carney v. Mosher, 97 Mich. 554.

48. Sax v. Detroit Grand Haven & Milwaukee Ry. Co., 125 Mich. 252, 84 Am. St. Rep. 572 not within statutes. Mail and Express Co. v. Wood, 140 Mich. 505; Thomas v. South Haven & E. R. Co., 138 Mich. 50; Durgin v. Smith, 115 Mich. 239; Smalley v. Mitchell, 110 Mich. 650; Carr v. McCarthy, 70 Mich. 258; Sines v. Superintendents of Poor of Wayne Co., 58 Mich. 503; Sword v. Keithe, 31 Mich. 247; Cummings v. Stone, 13 Mich. 70.

F. Contracts for land.

The purpose of this provision is to prevent fraudulent transfers of real estate, by requiring contracts of this nature to be evidenced by writing and by prohibiting the establishment of title to real estate by parol evidence, and for that reason verbal agreements purporting to pass title to land are void and invalid. Sections 9509 and 9511 clearly adopt the well known common law distinction between a lease and a contract *for a lease*. If the contract constitutes a lease of itself, it can be effected only by the former sections; if only a contract for a lease, or future letting, it will be governed by the latter⁴⁹. A verbal agreement, under which defendant advanced money to purchase land and timber in which complainant held an option, falls within the statute of frauds and therefore must be in writing⁵⁰. Where the evidence showed that a right was created to flow water over adjoining lands owned by another for an indefinite period and in consideration of an annual compensation, the agreement giving this right has all the incidents of a tenancy, such as possession by the grantee with right to enjoyment, and an annual return for such enjoyment, which, whether called rent or not, would have been rent in fact. This agreement must be in writing in order to be valid⁵¹. The interest of an execution purchaser, though not the legal estate, is an equitable estate which our statute protects by an action of trespass or waste, before deed, and which, after deed, relates back to the sale, for injury to the

49. Tillman v. Fuller, 13 Mich. 113.

50. Tuttle v. Bristol, 142 Mich. 148. Within statutes: Detroit H. & I. R. Co. v. Forbes, 30 Mich. 165; Taylor v. Boardman, 24 Mich. 287; Hogsett v. Ellis, 17 Mich. 351. Not within statutes: Hannan v. Prentiss, 124 Mich. 417; Smalley v. Mitchell, 110 Mich. 650; Dodder v. Snyder, 110 Mich. 69; Watermann Real Estate Exchange v. Stevens, 71 Mich. 104; Hayes v. Livingston, 34 Mich. 384; 22 Am. Rep. 533; Broas v. Broas, 153 Mich. 310; Dummer v. U. S. Gypsum Co., 153 Mich. 122.

51. Morrill v. Mackman, 24 Mich. 279, 9 Am. Rep. 124. Within statute: Barrett v. Cox, 112 Mich. 220; McIntosh v. Hodges, 110 Mich. 319; Hand v. Osgood, 107 Mich. 55, 30 L. R. A. 379, 61 Am. St. Rep. 312; Fratcher v. Smith, 104 Mich. 537; Carney v. Mosher, 97 Mich. 554; Chesebrough v. Pingree, 72 Mich. 438, 1 L. R. A. 529; Beller v. Robinson, 50 Mich. 264. Not within statute: Drew v. Billings Drew Co., 132 Mich. 65; Baldwin v. King, id, Ladd v. Brown, 94 Mich. 136; Whiting v. Ohlert, 52 Mich. 462; 50 Am. Rep. 265; Tillman v. Fuller, 13 Mich. 113.

land; it is an interest capable of assignment, but requiring an assignment to be executed and acknowledged like deeds of land; and it can only be divested, otherwise than under the statute of redemption, by an instrument conforming to the requirements of the statute of frauds⁵². Where A., by deed, leased premises to B. who afterwards assigned the lease to C., and A. gave his consent to the assignment, and agreed by parol to accept C. as his tenant and to look to him for the rent, this assignment was a sufficient surrender of the lease by operation of law⁵³. The creation of an easement by right of drainage through the lands of another is such an interest in lands as cannot be conveyed by parol⁵⁴. Though an oral contract to sell standing timber is invalid as a contract, yet it is good as a license, and timber cut thereunder before its revocation becomes the property of the licensee⁵⁵. Parol evidence is inadmissible to prove the transfer of an interest in land⁵⁶. A verbal agreement for the purchase of lands, with a stipulation that money paid down may be retained as stipulated damages if the purchaser fails to complete the bargain, is all a single contract, and void under the statute of frauds⁵⁷. Ice already formed upon a pond, whether in or out

52. *Whiting v. Butler*, 29 Mich. 122. Within statute: *Tabor v. Tabor*, 136 Mich. 255; *Auly v. Upham*, 135 Mich. 131, 106 Am. Rep. 388; *Stewart v. McLaughlin's Estate*, 126 Mich. 1; *Smalley v. Mitchell*, 110 Mich. 650; *McCann v. Wilcox*, 106 Mich. 64; *Hugck v. Bailey*, 100 Mich. 223; *Wood v. Michigan Air Line R. Co.*, 90 Mich. 334; *DeMill v. Moffat*, 49 Mich. 126; *Shaw v. Chambers*, 48 Mich. 355; *Mette v. Teldman*, 45 Mich. 25; *Nims v. Sherman*, 43 Mich. 45; *Corwin v. Gore*, 38 Mich. 381; *Grover v. Buck*, 34 Mich. 45; *Wright v. DeGross*, 14 Mich. 104; *Gugins v. Van Gorder*, 10 Mich. 523. Not within statute: *Pittsburg and L. A. Iron Co. v. Lake Superior Iron Co.*, 118 Mich. 109, 178 U. S. 270, 44 L. Ed. 1065; *Judson v. Miller*, 106 Mich. 140; *Merson v. Merson*, 101 Mich. 55; *Sullivan v. Dunham*, 42 Mich. 518;

Hayes v. Livingstone, 34 Mich. 384, 22 Am. Rep. 533; *Dougherty v. Randall*, 3 Mich. 581.

53. *Logan v. Anderson*, 2 Doug. 101.

54. *Schultz v. Huffman*, 127 Mich. 276.

55. *Antrim Iron Co. v. Anderson*, 140 Mich. 702. Not within statute: *Spalding v. Archibald*, 52 Mich. 365, 50 Am. Rep. 253; *Greeley v. Stetson*, 27 Mich. 153; *Morrill v. Mackman*, 24 Mich. 279, 9 Am. Rep. 124; *Millard v. Reese*, 1 Mich. 107.

56. *McDonald v. Smith*, 139 Mich. 211; *Jamison v. Hare*, 29 Mich. 207.

57. *Scott v. Bush*, 26 Mich. 418, 12 Am. Rep. 311. Within statute: *Ropley v. McKinney's Estate*, 143 Mich. 508; *Ball v. Harpham*, 140 Mich. 661; *Rodgers v. Lambe's Estate*, 137 Mich. 241; *McLennan v. Boutell*, 117 Mich. 544; *Poppe v. Porre*, 114 Mich. 649, 68 Am. St.

of the water, is personalty and can be sold by parol agreement⁵⁸. An oral contract of partnership for the purpose of dealing in lands is void⁵⁹. A sale of land made by auctioneers without written authority from the owner is void⁶⁰.

G. Contracts for the sale of goods.

This provision requires that any contract for the sale of any goods, wares or merchandise, for the price of fifty dollars or more, shall not be valid, unless the purchaser shall:

- (a) Accept and receive part of the goods; or
- (b) Shall give something in earnest, to bind the bargain or in part payment; or,
- (c) Unless some note or memorandum in writing of the bargain be made, and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

By the common law, before the passage of the English statute, contracts and agreements were most commonly entered into without any writing, but this, as experience proved, was productive of many fraudulent and corrupt transactions, which those engaged in would generally seek to uphold and sustain, by perjury or subornation of perjury, and it was therefore found necessary that certain contracts and agreements should be reduced to writing and signed by the party to be charged, unless the purchaser accepted and actually received some part, at least,

Rep. 503; Chick v. Sissen, 95 Mich. 412; Collar v. Collar, 86 Mich. 507, 13 L. R. A. 621; McDonald v. Maltz, 78 Mich. 685; Kelsey v. McDonald, 76 Mich. 188. A contract for the sale of lands must be complete in itself, and leaving nothing to rest in parol: Webster v. Brown, 67 Mich. 328; Weaver v. Aitcheson, 65 Mich. 285; Bowerman v. McKay, 63 Mich. 454; Wardell v. Williams, 62 Mich. 50, 4 Am. St. Rep. 814; Raub v. Smith, 61 Mich. 543, 1 Am. St. Rep. 619; Wagner v. Egglesten, 49 Mich. 218; Maynard v. Brown, 41 Mich. 298; Rawdon v. Dodge, 40 Mich. 697; Hillebrands v. Nibbelink, 40 Mich. 646; McEwan v. Ortman,

34 Mich. 325; Liddle v. Needham, 30 Mich. 147; 33 Am. Rep. 350; Hogsett v. Ellis, 17 Mich. 351. Not within statute: Sullivan v. Ross' Estate, 98 Mich. 570; Carr v. Leavitt, 54 Mich. 540; Higgins v. Kostner, 41 Mich. 318, 32 Am. Rep. 160; Holland v. Hoyt, 14 Mich. 238; Laing v. McKee, 13 Mich. 124, 87 Am. Dec. 738.

58. Higgins v. Kestner, 41 Mich. 318.

59. Nester v. Sullivan, 147 Mich. 493, 9 L. R. A. (N. S.) 1106. Not within statute: Petre v. Torrent, 88 Mich. 43; Davis v. Serber, 69 Mich. 246.

60. Muffatt v. Gott, 74 Mich. 672.

of the goods or property sold, or gave something as *earnest*, to bind the bargain, or in part payment therefor. Stock actually issued in an incorporated company is "goods" within the meaning of this provision of the statute⁶¹.

A mere oral agreement on the part of one person to sell, and of another to accept, a quantity of curbstone lying where the seller deposited them after completing a public contract, the buyer agreeing to send for them when desired, is, notwithstanding the bulky nature of the subject-matter, insufficient to constitute a constructive delivery which will satisfy the statute of frauds, a constructive delivery, *even*, not being allowed to rest in words alone⁶². An agreement to install stokers and connect them with machinery belonging to defendant, and which, when connected, will become a part of the fixtures already on defendant's premises, is not a sale of goods, within the statute of frauds⁶³. The acceptance and delivery, under the clause relating to the same, must be an actual acceptance by the vendee with an intention of taking the possession as owner, and the acceptance must be unequivocal and there must be a delivery of the goods by the vendor, with an intention of vesting the right of possession of the whole in the vendee. A parol agreement for the sale and purchase of chattels for the price of \$50 or upwards, without actual delivery of the property or any part, and where nothing is given as *earnest* or by way of payment, and no written note or memorandum of the agreements is signed by the party sought to be charged thereby, and no acts of ownership over the property are subsequently exercised by the vendee, although it was a condition of the agreement that the vendee should take the chattels where they then were, and the vendor should not be troubled to make any delivery, is within the

61. Sprague v. Hosie, 155 Mich. 30.

62. Gorman v. Brossard, 120 Mich. 611; Godkin v. Weber, 154 Mich. 207.

63. Underfeed Stoker Co. v. Detroit Salt Co., 135 Mich. 431. Not within statute: Slesinger v. Bresler,

110 Mich. 198; Hatch v. McBrien, 83 Mich. 159; Wilcox v. Young, 66 Mich. 687; Turner v. Mason, 65 Mich. 662; Hamilton v. Frothingham, 59 Mich. 253; Sutherland v. Caster, 52 Mich. 151; Green v. Brookins, 23 Mich. 481, 9 Am. Rep. 74.

statute⁶⁴. Earnest money or part payments take the transaction out of the provision of the statute. Where wool belonged to different parties in severalty, and that was understood by the purchaser, the fact that the contract of sale was made by a person interested in a part, and agent for the rest, and at a uniform price per pound, does not make it a joint sale, but the transaction is several, and a sum of money paid as earnest in such a transaction to the person acting for all, will be regarded as belonging ratably to the vendors of the different parcels, and will, therefore, bring all of them within the protection of the provisions of the statute legalizing parol sales without delivery, where earnest money is given to apply on the price⁶⁵. A mere oral agreement whereby a creditor is to take payment of a debt of \$125 in curbstone belonging to his debtor, where no receipt or other evidence is given of the extinguishment of the debt, cannot be sustained, as against the objection that, there being no delivery, it violates the statute⁶⁶. A part payment as required by the statute to make a verbal contract for the sale of goods for more than \$50 valid, may be made at a subsequent time, if it is intended to be received as part payment upon the contract price⁶⁷. A contract need not be in writing where A. makes a contract with a broker to find a purchaser for goods of the value of \$50⁶⁸.

64. *Alderton v. Buchoz*, 3 Mich. 322, relates to acceptance and delivery. Within statute. *Calvert v. Schultz*, 143 Mich. 441; *Gatiss v. Cyr*, 134 Mich. 233; *Gorman v. Brosard*, 120 Mich. 611; *McCormick Harvesting Mach. Co. v. Cussack*, 116 Mich. 647; *Kuppenheimer v. Wertheimer*, 107 Mich. 77; *Hudson v. Emmons*, 107 Mich. 549; *Smith v. Brennan*, 62 Mich. 349, 4 Am. St. Rep. 867; *Kindshaff v. De Ruyter*, 39 Mich. 1, 33 Am. Rep. 340; *Scotlen v. Sutler*, 37 Mich. 536; *Hill v. Chambers*, 30 Mich. 422.

Evidence of validity of contract: *Grimes v. Van Vechten*, 20 Mich.

410.

Acceptance both parties: *Chamberlain v. Dow*, 10 Mich. 317. Not within the statute: *Sullivan v. Sullivan*, 70 Mich. 583, 4 Am. St. Rep. 867; *Richards v. Burroughs*, 62 Mich. 117; *Rasch v. Beppill*, 52 Mich. 455; *Whaley v. Gale*, 48 Mich. 143.

65. *Burhans v. Corey*, 17 Mich. 282.

66. *Gorham v. Brossard*, 120 Mich. 611.

67. *Dallavo v. Richardson*, 134 Mich. 226; *Briggs v. Bush*, 152 Mich. 53.

68. *Obenauer v. Solomon*, 151 Mich. 570.

H. Operation of statute.

The practical operation and effect of the statute of frauds is to cause certain enumerated conveyances and contracts not to be enforceable unless they are put in writing or unless evidence is furnished in writing or by some act by which unequivocal proof may be established that the bargain, promise, and contract was a complete one. Oral contracts are not void under the statute, neither are written ones binding. It is only to common law contracts that the statute applies. Agreements entered into before its adoption are not affected by the statute; that is, it is not retrospective.

(a) Operation as to Rights and Remedies.

Under certain circumstances evidence of a fraudulent transaction cannot be excluded on the ground that the agreement to sell the land, not being in writing, was void under the statute of frauds⁶⁹. A contract void under the statute of frauds is a mere nullity, and cannot be used for any purpose⁷⁰. A verbal agreement by A. to pay a specified sum to B. if the latter will perform certain services for C., extending over a period of more than one year, is void under the statute, and the appropriation by C. of the benefits of the services, though rendered with the knowledge and approval of A., does not raise an implied promise on the part of A. to pay therefor⁷¹. The sale of an equitable interest is as good as any other consideration and the sale of such interest in lands as could only be transferred at law by a written instrument is, when possession was delivered in furtherance of it so that the contract was carried out by part performance, the statutory exception in regard to parol contracts partly performed, and the transfer to a *bona fide* purchaser puts an end to any redemption⁷². The general rule that an agreement void

69. *Ochsenkehl v. Jeffers*, 32 Mich. 482; *McNaughton v. Smith*, 136 Mich. 368; *Gillett v. Knowles*, 108 Mich. 602.

70. *Ball v. Harpham*, 140 Mich. 661; *Wardell v. Williams*, 62 Mich. 543. 4 Am. St. Rep. 814; *Raub v.*

Smith, 61 Mich. 543, 1 Am. St. Rep. 619; *Sutton v. Rowley*, 44 Mich. 112.

71. *Bristol v. Sutton*, 115 Mich. 365.

72. *Miner v. O'Harrow*, 60 Mich. 91.

under the statute is void in all its parts, and cannot be considered for the purpose of assessing damages, and is not good as fixing the consideration, is inoperative where a party entered upon the performance of his contract, and was occupying the land under it, and had made a portion of the clearing agreed upon. Under such circumstances he could have enforced the parol agreement by a resort to equity⁷³.

(b) *Operation as to interest created without writing in estates from year to year, month to month, or at will.*

The original statute declares a verbal lease that is within the statute to have the force and effect of an estate at will only⁷⁴.

(c) *Validity of oral contracts and conveyances without deed or note in writing.*

Contracts falling within the fourth and seventeenth sections of the original statute, or the statutory provisions substantially equivalent to such sections, are voidable at the election of either one of the parties thereto⁷⁵, but the Michigan Statute under the fourth section makes the contract absolutely void⁷⁶ in declaring that no such contract shall be valid, instead of declaring that no action shall lie upon it. An oral contract to sell the stumpage in cedar land, though void under the statute, is valid as a license to cut the timber, until it is revoked; and when the timber is cut the title to it passes because the right thereto has become a chattel interest⁷⁷.

(d) *Enforcement of oral contracts in equity.*

Equity takes cognizance of the statute of frauds. It will compel the performance of a verbal contract which falls within the statute where the non-performance to execute it would

73. *Smelling v. Valley*, 103 Mich. 580.

74. *Steketee v. Pratt*, 122 Mich. 81; Compare *Huyser v. Chase*, 13 Mich. 98; *Barrett v. Cox*, 112 Mich. 220; *McIntosh v. Hodges*, 110 Mich. 319; *Brant v. Vincent*, 100 Mich. 426; *Smelling v. Valley*, 103 Mich. 580; *Huntington v. Parkhurst*, 87 Mich. 38; *Coan v. Mole*, 39 Mich. 454;

Morrill v. Machman, 24 Mich. 279, 9 Am. Rep. 124.

75. *Spalding v. Archibold*, et al., 52 Mich. 365, 50 Am. Rep. 253. Enforcement of contract: *Pfaff v. Cummings*, 67 Mich. 143; *Hildebrands v. Nibbelink*, 40 Mich. 646; *Hall v. Soule*, 11 Mich. 494.

76. *Abel v. Munson*, 18 Mich. 306.

77. *Spalding v. Archibold*, 52 Mich. 365.

amount to a fraud⁷⁸, or it will reform a written instrument falling within the statute where it fails to correctly express the intention of the parties on account of fraud, accident, or mistake, and where, if the relief sought for was not granted, one of the parties could perpetrate a fraud upon the other⁷⁹.

(e) *Promise reduced to writing.*

The rule is that it does not make a written contract which was never executed any the less sufficient to show by reference the terms of a parol contract, of the same effect as the other, that adopts the written one as a standard⁸⁰.

(f) *Collateral contracts.*

When a collateral agreement forms part of the consideration for entering into a written contract, parol evidence may be admitted to show an agreement collateral to a written contract and it is not in opposition to the statute⁸¹, but a warranty not contained in a written contract of sale cannot be proved by parol⁸².

(g) *Contracts part within statute.*

An unenforceable contract in part by reason of the statute does not make it unenforceable as a whole⁸³.

(h) *Contracts performed in part within statute.*

It is purely an equitable doctrine that part performance will take an oral contract out of the statute of frauds⁸⁴. At law only a complete and full performance of the contract will prevent the operation of the statute⁸⁵.

78. *Ochsenkehl v. Jeffers*, 32 Mich. 482; *McNaughton v. Smith*, 136 Mich. 368. Contract may be bound as a basis of recovery for fraud.

79. *Gillet v. Knowles*, 108 Mich. 602.

80. *Sovereign v. Ortman*, 47 Mich. 181.

81. *Brown v. Bolt*, 116 Mich. 52; *Powell v. Conant*, 33 Mich. 306.

82. *Hallett v. Gordon*, 122 Mich. 567.

83. *Dietrich v. Hoefelmeir*, 128 Mich. 145; *Chappell v. Bakley*, 90 Mich. 35; *Stensell v. Leavitt*, 51 Mich. 536; *Jackson v. Evans*, 44 Mich. 510; *Scott v. Bush*, 29 Mich. 523.

84. Contracts performed in part within statute: *Hallett v. Gordon*, 122 Mich. 567; *Kent Furniture Mfg. Co. v. Long*, 111 Mich. 383; *Bennett v. Knowles*, 111 Mich. 226; *Gardner v. Gardner*, 106 Mich. 18; *White v. Cleaver*, 75 Mich. 104; *Waldron v. Laird*, 65 Mich. 237; *Huff v. Hall*, 56 Mich. 456; *Leslie v. Smith*, 33 Mich. 64.

Contracts performed only as to part not within statute. *Carney v. Mosher*, 97 Mich. 554; *Welch v. Whelpley*, 62 Mich. 15; *Whipple v. Parker*, 29 Mich. 369.

85. *Pike v. Pike*, 121 Mich. 170; *Carmichael v. Carmichael*, 72 Mich. 76; *Farwell v. Johnson*, 34 Mich. 342.

(i) *To whom statute available.*

The statute does not require the agreement of a vendee to pay purchase money for land to be in writing in order to enable him to contract to sell the land again. It is therefore of no consequence, so far as such a contract is concerned, whether the vendee could have enforced his rights in the land as against his vendor, or not; and the grantee of the vendee cannot defend an action for the price brought by the vendee on the ground that the latter's contract with the vendor was not in writing⁸⁶.

(j) *Contract as ground for equitable relief.*

Redress is not granted in a parol contract for a part performance capable of full pecuniary measurement⁸⁷.

(k) *Tender as to performance.*

Tender as to performance does not take an executory contract out of the statute, so as to support a bill for specific performance by the purchaser⁸⁸.

(l) *Recovery for use and occupation.*

The doctrine that where there has been a contract to purchase, valid at law or enforceable in equity on the ground of part performance, under which the vendee has entered and occupied, the vendor cannot maintain assumpsit for such occupation while the contract, though unperformed, is yet unrescinded and in full force, but where purchaser had been served with notice to quit he then became liable for use and occupation⁸⁹.

(m) *Recovery of services.*

One who, under a contract which cannot be enforced because within the statute, has done and performed valuable labor and services of which the other party thereto has had the advantage, is entitled to recover therefor at the contract rate less any damages the other party may have suffered from incomplete performance⁹⁰.

86. *Burke v. Wilbur*, 42 Mich. 327.

87. *Smith v. Marsh*, 132 Mich. 407; *Webster v. Gray*, 37 Mich. 37.

88. *Wisconsin & M. R. Co. v. McKenna*, 139 Mich. 43; see *Dwight v.*

Cutler, 3 Mich. 566, 64 Am. Dec. 103.

89. *Dwight v. Cutler*, 3 Mich. 566.

90. *Fuller v. Rice*, 52 Mich. 435; *Snyder v. Neil*, 129 Mich. 692; *Moore v. Capewell Horse Nail Co.*, 76 Mich. 606; *Cadman v. Markle*, 76 Mich. 448.

(n) *Services rendered to third persons.*

When one enters into a verbal contract with another that he will work for a third party at a specified sum, and he performs the work which extended over a period of one year, the contract is void under the statute and he cannot recover for the value of his services from the promisor because the latter did not receive any benefit from the services, though rendered with the knowledge and approval of the third party⁹¹.

(o) *Contracts to convey or devise lands in consideration of the performance of services.*

The rule is that compensation for the services cannot be recovered on the basis of the value of the land agreed to be conveyed⁹².

(p) *Contracts implied by law on part performance.*

Where an agreement, void under the statute, has been executed by one party, and the other has received the consideration, the former can maintain an action against the latter for the benefit thus conferred, and accepted and appropriated; not, however, upon the contract, but upon the implied assumpsit⁹³.

(q) *Contracts completely performed.*

The general rule is well established that the statute applies only to executory contracts, and not to contracts completely executed and performed by both parties to the contract⁹⁴. This rule governs also in a case where a contract is within the statute in one particular part only, and when that particular part has been fully and completely performed by the interested parties, the statute

91. *Bristol v. Sutton*, 115 Mich. 365.

92. *Sutton v. Rowley*, 44 Mich. 112; *Hillebrands v. Nibbelink*, 40 Mich. 646.

93. *Snyder v. Neal*, 129 Mich. 692; *Moore v. Capewell Horse Nail Co.*, 76 Mich. 606; *Cadman v. Markle*, 76 Mich. 448, 5 L. R. A. 707; *Fuller v. Rice*, 52 Mich. 435; *Sutton v. Rowley*, 44 Mich. 112; *Cilley v. Burkholder*, 41 Mich. 749; *Hillebrands v. Nibbelink*, 40 Mich. 646; *Whipple v. Parker*, 29 Mich. 369.

94. *Tasley v. Delano*, 139 Mich. 602; *Michigan Cent. R. Co. v. Chicago, K. & S. Ry. Co.*, 132 Mich. 324; *Gerber v. Upton*, 123 Mich. 605; *Pike v. Pike*, 121 Mich. 170; *Armistage v. Saunders*, 94 Mich. 482; *Willey v. Crane*, 69 Mich. 17; *Byers v. Byers*, 65 Mich. 598; *Toan v. Pline*, 60 Mich. 385; *Watrous v. Allen*, 57 Mich. 362, 58 Am. Rep. 363; *Doty v. Martin*, 32 Mich. 462; *Hill v. Chambers*, 30 Mich. 422; *Detroit H. & I. R. Co. v. Forbes*, 30 Mich. 165.

does not apply. Contracts in which interest in land is created or which are entered into for the conveyance of lands are taken out of the statute by complete performance⁹⁵. Contracts to answer for the debt or default of another where fully executed and performed are not within the statute⁹⁶. Contracts that have been fully performed cannot be questioned as to their validity⁹⁷. Contracts not to be performed within one year when fully executed cannot thereafter be questioned as to their validity⁹⁸.

(r) *Contracts performed in part.*

It is only upon certain circumstances⁹⁹ that a particular case will be taken out of the statute.

(s) *Parol modification of written instrument.*

The general rule has been well established that parties to a written contract under the statute cannot alter one or more of the terms of the contract by a mere oral agreement¹⁰⁰. The title of a vendee to land cannot, under the statute of frauds, be divested from the owner by verbal authority, or by the mere payment of money by another in a land contract for its purchase¹⁰¹.

(t) *Oral Contracts as Grounds of Defense.*

The rule is well settled that an oral contract within the statute cannot be enforced as a defense¹⁰².

95. *Gerber v. Upton*, 123 Mich. 605; *Michigan Cent. R. Co. v. Chicago, etc., R. Co.*, 132 Mich. 324.

96. *Willey v. Crane*, 69 Mich. 17.

97. *Armitage v. Saunders*, 94 Mich. 482.

98. *Doty v. Martin*, 32 Mich. 462.

99. *Bubler v. Trombly*, 139 Mich. 557; *Wisconsin & M. R. Co. v. McKenna*, 139 Mich. 43; *Schaltz v. Huffman*, 127 Mich. 276; *Shearer v. Gibson*, 123 Mich. 467; *Hallett v. Gordon*, 122 Mich. 567; *Bartlett v. Bartlett*, 93 Mich. 293; *Lloyd v. Hollenbeck*, 98 Mich. 203; *Messmore v. Cunningham*, 78 Mich. 623; *Kelsey v. McDonald*, 76 Mich. 188; *Carmichael v. Carmichael*, 72 Mich. 76, 1 L. R. A. 596, 16 Am. St. Rep. 528; *Miner v. O'Harrow*, 60 Mich. 91;

Peckham v. Balch, 49 Mich. 179; *Murphy v. Stever*, 47 Mich. 522; *Wetmore v. Neuberger*, 44 Mich. 362; *Davis v. Strowbridge*, 44 Mich. 157; *Webster v. Gray*, 37 Mich. 37; *Culgrove v. Solomon*, 34 Mich. 494; *Farwell v. Johnston*, 34 Mich. 342; *Bomier v. Caldwell*, 8 Mich. 463, affirming Har. Ch. 67; *Weed v. Terry*, 2 Doug. 214, 45 Am. Dec. 257, affirming Walk. Ch. 501; *Norris v. Showerman*, 2 Doug. 16.

100. *Donovan v. Richmond*, 61 Mich. 467; *Abell v. Munson*, 18 Mich. 306; *Cook v. Bell*, 18 Mich. 387.

101. *Truski v. Stresesveski*, 60 Mich. 34.

102. *Leman v. Randall*, 124 Mich. 689; *Weaver v. Aitcheson*, 65 Mich. 285.

(u) *Contract as Measure of Damages.*

In general it may be enunciated that in an action to recover back the value of the considerations paid and received or to recover on an implied promise to pay for part performance upon a contract void under the statute of frauds, the contract may be referred to for the purpose of showing the equitable circumstances under which the consideration was received, to reduce the value; but it cannot be made use of by the plaintiff to aid him in recovering beyond the real value of such consideration¹⁰³.

I. *Construction of Statutes.*

The general rule is that the policy of the statute is more beneficially carried out, in its true spirit, by a liberal construction and by limiting, rather than extending its exceptions. Courts of equity will not enlarge the exceptions to the statute¹⁰⁴. The statute was designed to prevent disputes as to *what* the oral contract sought to be enforced *was*¹⁰⁵.

J. *Conflict of Laws.*

As to whether the *lex fori* or *lex loci* applies rests upon a distinction made between the language of the fourth or seventeenth sections in a particular case falling under one of these sections¹⁰⁶.

K. *Pleading.*

In the early interpretation of the pleadings under the statute certain points presented themselves which involved some difficulty, but they soon became adjusted so that the law is now well settled as to questions of that character. The general rule is well established that it is not necessary to state in the declaration or, where the suit is in equity, in the bill, that the contract has been reduced to writing, for the statute has made no alteration in the rules of pleading; and where the plaintiff declares,

103. Whipple v. Parker, 29 Mich. 369.

104. Webster v. Gray, 37 Mich. 37.

105. Kelsey v. McDonald, 76 Mich. 188.

106. New York Third National Bank v. Steel, 129 Mich. 434; Kling v. Fries, 33 Mich. 275 is distinguished. Foreign Statute must be proved, Id.

as he might at common law, upon the agreement generally, without stating whether it is in writing or not, it will be presumed to be in writing, and if the making of the agreement is denied, he is simply required to produce the memorandum in evidence at the trial or hearing¹⁰⁷. The bill must set forth the agreement accurately and clearly¹⁰⁸. The pleading of the statute as a defense is available under a plea of the general issue¹⁰⁹. Where the conveyance was made for the avowed purpose of placing the property beyond the reach of prospective creditors, the grantee, in his answer to a bill to compel a reconveyance, admits a parol promise to reconvey, this admission will not avail the complainant¹¹⁰. A bill to compel a conveyance under a contract must set forth the facts relied upon to show such part performance as will take the case out of the statute¹¹¹.

L. Evidence.

The general rule is that it is incumbent upon the plaintiff under the statute of frauds to show that the contract or a memorandum thereof, was reduced to writing and signed by or on behalf of the defendants and the memorandum must embrace all the substantial terms of the contract, except the consideration, and cannot be aided by parol evidence when essentially defective¹¹². A bill in chancery must be proved in substance as alleged beyond a reasonable doubt¹¹³. In so far as the parties have executed a void parol agreement, it is admissible¹¹⁴.

107. *Dayton v. Williams*, 2 Doug. 31; *Stearns v. Lake Shore & M. S. Ry. Co.*, 112 Mich. 651; *Kroll v. Diamond Match Co.*, 106 Mich. 127; *Harris Photograph Supply Co. v. Fisher*, 81 Mich. 136.

108. *Brown v. Brown*, 47 Mich. 384; *Stickney v. Parmenter*, 35 Mich. 237; *Moote v. Scriven*, 33 Mich. 504; *Retson v. Dodge*, 33 Mich. 466; *Ford v. Loomis*, 33 Mich. 121; *Wright v. Wright*, 31 Mich. 380; *Van Wert v. Chidester*, 31 Mich. 207; *Harwood v. Underwood*, 28 Mich. 427; *Mundy v. Foster*, 21 Mich. 313; *Munsen v. Loree*, 21 Mich. 497; *Case v. Peters*, 20 Mich. 298; *Covell v. Cole*, 16 Mich. 223; *Chambers v. Livermore*,

15 Mich. 381; *Hunter v. Hopkins*, 12 Mich. 22; *Peckham v. Buffam*, 11 Mich. 529; *Wales v. Newbold*, 9 Mich. 45; *Ingersoll v. Horton*, 7 Mich. 408; *Jones v. Tyler*, 6 Mich. 368; *Wilson v. Wilson*, 6 Mich. 16; *Weed v. Terry*, 2 Doug. 352.

109. *Third National Bank of New York v. Steel*, 129 Mich. 434.

110. *Poppe v. Poppe*, 114 Mich. 649.

111. *Peckham v. Bulch*, 49 Mich. 199.

112. *Palmer v. Marquette & Pacific Rolling Mill Co.*, 32 Mich. 294.

113. See note 196 *Supra*.

114. *Moll v. Smith*, 132 Mich. 618; *Fuller v. Rice*, 52 Mich. 435.

The rule is well established that a written contract under the statute cannot be varied, modified or added to by parol evidence¹¹⁵. Where an agreement was not enforceable, because it was not in writing, parol evidence of the agreement cannot be admitted to establish it¹¹⁶. Testimony that the defendant gave the third party a pass-book in which to have the purchases from the plaintiff entered, which book bore defendant's name, is admissible as tending to corroborate plaintiff in the statement that the credit was to be given to the defendant¹¹⁷. Both the delivery and acceptance of personal property must be established in order to save the sale from the operation of the statute, and the burden of proof rests upon the vendor¹¹⁸. In accordance with the principles of the common law the legal effect due to the plain words of a deed cannot be contradicted by parties or privies in any collateral matter by parol evidence¹¹⁹. The sufficiency, under the statute, of a description of land in a contract for its sale, is a question which arises on the face of the papers, and, it seems, should be settled by inspection thereof before the introduction of extrinsic evidence to connect the contract with any particular promises¹²⁰.

M. Practice.

The value of the property in a void contract under the statute cannot be used as a measure of damages¹²¹. No recovery can be had for expenses in fulfilling the terms of a void contract under the statute¹²². See note for other points.

115. *Blagborne v. Hunter*, 101 Mich. 377; *Barton v. Gray*, 57 Mich. 634; *McEwen v. Ortman*, 34 Mich. 325; *Cook v. Bell*, 18 Mich. 398; *Abell v. Munson*, 18 Mich. 312.

116. *Rowden v. Dodge*, 40 Mich. 697.

117. *Rossman v. Rock*, 97 Mich. 431.

118. *The Harris Photograph Supply Co. v. Fisher*, 81 Mich. 136.

119. *Jacobs v. Miller*, 50 Mich. 126.

120. *Eggleston v. Wagner*, 46 Mich. 610.

121. *Wardell v. Williams*, 62 Mich. 50; *Raub v. Smith*, 61 Mich. 543; *Smelling v. Valley*, 103 Mich. 584; *Sutton v. Rowley*, 44 Mich. 113; *Hillebrands v. Nibbelink*, 40 Mich. 650.

122. *Wetmore v. Newberger*, 44 Mich. 362. As to questions for jury: *Hack v. Kellogg*, 146 Mich. 541; *Dallavo v. Richardson*, 134 Mich. 226. As to instructions: *Ford v. McLane*, 131 Mich. 371; *Wilcox v. Young*, 66 Mich. 687; *Leslie v. Smith*, 32 Mich. 64. As to review: *Burrough v. Morse*, 48 Mich. 520.

Contracts in Michigan

Introduction to Forms

INTRODUCTION

In the selection and compilation of these forms every effort has been strained to cover every form of contracts that is likely to arise in business transactions and the commercial world, and to be sufficiently suggestive to the practitioner by giving him a large variety of forms with various clauses so as to aid him in making combinations to meet any emergency that may arise in his practice in drafting contracts as well as to aid him in the wording of new provisions which he is desirous of embodying in the contract at hand. The function of the mind designated by the word adaptability plays an important part in the drafting of contracts. It is apparent to the practitioner that a close study of the forms will reveal to him methods by which he can adapt one form of a group to another involving similar facts, relations and obligations. Furthermore, it is in a close examination and study of the forms, suitable to the facts, rights and duties to be embodied in a contract by the practitioner, that suggestions are given by which he finds the proper wording for the contract, clauses or provisions he is desirous of incorporating, and if these suggestions cannot be found in the particular group, they may be found in an allied group.

The first requisite for the proper drafting of legal documents is the acquisition of legal style. This quality can be easily acquired by carefully studying, analyzing, and intelligently copying legal forms, and above all by forming the habit of thinking in the usual legal terms.

Forms are not intended to be copied *verbatim*. They are merely to be used as guides in the sense of suggesting what are essential elements in the particular kind of contract the practitioner is called upon to draft and to give such hints as are legally requisite in the transaction he has in hand. The law pertinent to the subject should be kept well in mind in order to insure

INTRODUCTION—PART II, FORMS

accuracy in the statement of the rights and duties to be embodied in the contract. A careful analysis, viewed from the formative elements, should be made of the facts of the transaction which constitutes the *agrément*; then the rights and duties should be clearly defined, and all the legal consequences which are likely to arise under a breach should be carefully weighed and considered, so that the rights and duties which the contract creates are properly protected.

After these preliminaries have been attended to, a draft of the contract should be made in the logical order of the formative elements of contracts by setting forth agreement clause, parties, consideration, subject-matter, and conclusion, or if the contract is founded upon certain facts or circumstances, the recital should be introduced by the word, "Whereas," after which the preceding order should be maintained. The contract now should be given a thorough revision as to all the essential requisities of style before being submitted for final execution.

CONTRACTS IN MICHIGAN

PART TWO—Forms

§126. Agreements or Contracts. Skeleton.

This agreement, made this day of, A. D. 19...., between of, party of the first part, and, of, party of the second part, witnesseth:

That in consideration (*insert the subject-matter*)

In witness whereof, the parties have hereunto set their hands and seals the day and year first above written.

In presence of

.....

Or commence:

This memorandum of agreement, made this day of, A. D. 19...., (*then continue as above.*)

§127. Agreements or Contracts. Skeleton.

Whereas (*insert recital upon which contract is based.*) This agreement, made and entered into this day of, A. D. 19...., between hereinafter named the of, and hereinafter named the of

Now, therefore, in consideration of (*insert consideration and subject-matter*).

In witness whereof, the parties have hereunto set their hands and seals the day and year first above written.

§128. Agreements or Contracts. Skeleton.

This agreement, made and entered into this day of, A. D. 19...., between hereinafter

named the, of and
 hereinafter named the, of

Whereas, (*recital*)

Witnesseth:

Now in consideration (*insert subject-matter of contract*).

In witness whereof, the said parties have hereunto set their
 hands and seals this day of, A. D. 19..

§129. Agreements or Contracts. General Form.

This agreement, made the day of, one
 thousand nine hundred and, by and between
 of the city of, in the
 county of, of the first part, and,
 of, of the second part, witnesseth, that the
 said party of the second part covenants and agrees to and with
 the party of the first part, to (*insert the subject-matter of the
 agreement*). And the said party of the first part covenants and
 agrees to pay unto the said party of the second part, for the
 same, the sum of dollars, lawful money of
 the United States, as follows: The sum of
 dollars, on the day of, 19.., and
 the sum of dollars, on the day of
, with the interest on the amount due, payable
 at the time of each payment.

And for the true and faithful performance of all and every of
 the covenants and agreements above mentioned, the parties to
 these presents bind themselves, each unto the other, in the penal
 sum of dollars, as liquidated damages, to be
 paid by the failing party.

In witness whereof, the parties to these presents have here-
 unto set their hands (and seals), the day and year first above
 written. (*Signatures, with or without seals.*)

(*If attested by witnesses, add:*)

Signed, sealed, and delivered in the presence of
 (*Signatures of witnesses*)

§130. Agreements or Contracts. General Form.

This agreement, made this day of,
 19..., between of,
, of the first part, by, his attorney,
 and, of,
 of the second party, by, his attorney,
 witnesseth, that the said party of the first part (*etc. as in other
 forms to the end, signing thus:*)

..... (Seal)

By....., his Attorney.

..... (Seal)

By....., his Attorney.

§131. Adoption Contract.

(Bowins v. English, 138 Mich. 178.)

"Know all men by these presents, that I,of the county
 ofin the State of, being the sole surviving parent
 of an infant girl child namednow of the age of.....
, said child being born on the day of A. D.
 19.....

"In consideration of the love and affection which I have and
 bear for the said infant child, and my desire to see her properly
 raised and educated, and also for divers other good causes and
 considerations, I, the said....., hereunto moving, do by these
 presents give the said child,unto and, his
 wife, of the county ofin the State aforesaid, and hereby
 authorize them and unite with them in changing the name of said
 child to..... The said.....and.....his wife, hereby agreeing
 to take said child and adopt her as their own child under the name
 of, to clothe, educate and care for her as their own child
 and therefore are entitled to her services until she becomes of the
 age of..... The said.....hereby and by these presents com-
 mitting the custody of the person of said child,, unto the
 said.....and....., his wife, fully and in all respects whatever,
 hereby relinquishing all claims and right to control said child as

her father unto them, the said.....and.....until said child arrives at the age of.....years.

“And it is further mutually covenanted and agreed by and between the parties hereto that the said.....and wife may procure an act of the legislature of the State of....., authorizing them to adopt said child as their own, in case the same may be deemed necessary to constitute her their heir. And the said..... and....., his wife, hereby agree to clothe and educate the saidaccording to their condition and position in life.”

See Text, §24.

§132. Adoption Contract.

(Morrison v. Session's Estate, 70 Mich. 302.)

“This indenture, made the.....day of.....,between, of the township of....., in the county of....., and State of....., mother and surviving parent of....., agedyears on the.....day of.....,, and..... and....., his wife, of the township of....., county of....., and State aforesaid, witnesseth:

“That whereas, the said.....and.....have adopted the said child,, with the consent of the said.....

“And whereas, the said.....and.....desire to change the name of said child, and bestow upon her their family name, with intent to make her their heir.

“Therefore, we, the said parties,of the one part, andand.....of the other part, do declare that the said child,, is adopted as the child of the said.....and.....; and that said.....and.....intend to make such child their heir, and that she shall bear the name of.....

“Witness our hands and seals, at....., this day and year first above written.

“.....(L. S.)

“.....(L. S.)

“.....(L. S.)

See Text, §24.

§133. Advertising Contract.

.....hereby authorize the to reserve for.....use

.....of.....advertising space in The.....; and
AGREE to use said amount of space within the period of
months from.....190....advertisement to be published
 any Monday, Tuesday, Wednesday, Thursday, Friday, Saturday
 or Sunday edition, asmay order, for whichagree
 to pay the sum of \$.....said sum to be paid monthly on the
 basis of the amount of space used, computed at the rates named
 above; andfurther agree that in case of failure to use the
 full amount of space contracted for within the specified time, to
 pay.....for space actually used, a differential rate based on
 their rate card now in force.

It is understood and agreed:

1st. That the.....reserves the right to revise or reject any
 advertising "copy" furnished, should said "copy" be deemed ob-
 jectionable for publication.

2nd. No written or verbal conditions shall be claimed or allowed
 which are not fully set forth herein.

3rd. No advertisement will be published at less than price for
 two lines.

.....

ACCEPTED

(Subject to approval of the management.)
Advertising Agent.

For theSigned in duplicate.
 .. See Text, § 25.

§134. Advertising Contract.

.....19.....
hereby authorize the.....to insert.....adver-
 tisement in space of.....each Sunday, Monday, Tuesday, Wed-
 nesday, Thursday, Friday, Saturday, for.....times, commenc-
 ing.....19.....for whichagree to pay them monthly,
 on the basis of.....per.....Daily and.....per.....Sun-

day, as space is used, and subject to the following conditions.

1. This agreement cannot be invalidated by incorrect insertions or omissions. Theguaranteeing the full number of correct insertions.

2. Thereserves the right to revise or reject any copy furnished for publication which it may consider objectionable.

3. The publication of copy last furnished shall continue until new unobjectionable copy shall be supplied.

4. No written or verbal conditions shall be claimed or allowed which are not fully set forth herein.

.....
.....

ACCEPTED

(Subject to approval of management)
.....Advertising Agent. Address.....
For..... (Signed in duplicate)
.. See Text, § 25.

§135. Agreement for a Lease.

This agreement, made the day of,
19..., between of, and
....., of, witnesseth:

That the said hereby agrees to demise
and let to the said, by indenture, to be
executed on the day of next, the
dwelling-house and lot now occupied by the said
in the village of, to have and to hold the same
unto the said, his executors, administrators
and assigns, from the first day of next, for and
during the term of years, at or under the yearly rent
of dollars, payable quarterly, clear of all
taxes and assessments; in which lease there shall be contained
covenants on the part of the said, his
executors, administrators and assigns, to pay rent (except in

case the premises are destroyed by fire, the rent is to cease until they are rebuilt), and all taxes and assessments; to keep the premises in good repair (damages by fire excepted); not to carry on any offensive business upon the same; and to deliver up peaceable possession of the said premises at the expiration of the term aforesaid; and the said lease shall also contain covenants on the part of the said, his heirs and assigns, for quiet enjoyment; to renew said lease at the expiration of the term aforesaid, at the request of the said, to be made days prior to the time of such expiration, for a further term of years; and that, in case the said premises shall be destroyed by fire, the said will forthwith proceed to rebuild the same.

And the said hereby agrees to accept such lease on the terms aforesaid.

And it is agreed between the aforesaid parties, that the costs and charges of making, executing and recording, the said lease, and duplicate thereof, shall be equally borne and divided between them.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered (L. S.)

in presence of (L. S.)

See Text, § 125, F.

§136. Agricultural Contract.

(Johnson v. Henry, 127 Mich. 548.)

"This agreement, made and entered into this day of A. D. between, of the first part, and, of the second part, Witnesseth: Said party of the first part agrees to stump and clear ready for the plow, and to build a stump fence around and across through the middle, east and west, of the following described lands, to wit: (*here insert description.*) Said work to be commenced on or before the day of,, and to be completed on or

before the day of, Said second party to pay said first party the sum ofdollars per acre, as follows:dollars per acre to be applied on the payment of a certain chattel mortgage given by said first party to said second party, and the balance of.....(\$) dollars per acre to be paid to the first party as fast as said land is ready for the plow and approved by said second party. Said fence to be built at leastfeet high, and stumps to be laid close together and laid straight.

In witness thereof the parties have hereunto set their hands and seal on the day above written.

.....

In presence of

See Text, § 26.

§137. Apprenticeship Contract.

This agreement, made this.....day of....., A. D. 19....., witnesseth:

That, of the county of....., and state of....., now aged.....years, of (*his or her*) own free will, does hereby bind (*himself or herself*) to serve.....of the county of....., and State of....., as apprentice (*or clerk*) in the trade of a(*name trade, profession, or employment*) and to learn said (*trade or profession, etc.*), until (*he or she*) is of the age of eighteen or sixteen years, (*which will be on the*).....day of, A. D.

That during said term said apprentice shall serve said master faithfully, honestly, and industriously, his secrets keep, and his lawful commands everywhere obey; at all times protect and preserve the goods and property of the said master, and not suffer or allow any to be injured or wasted.

That said apprentice shall not buy, sell or traffic in his own goods, or the goods of others, nor be absent from the said master's service day or night without leave; but in all things behave as a faithful apprentice ought to do, during said term.

That said master shall clothe and provide for the said apprentice in sickness, and in health, and supply (*him or her*) with sufficient and suitable food, raiment, and lodging; and shall use and employ the utmost of his endeavors to teach or cause said apprentice to be taught and instructed in the trade of (*here state the trade, etc., as above*).

(That said master shall cause said apprentice to be taught to read and write, and the ground rules of arithmetic, the compound rules, and the rule of three.)

That said master shall at the expiration of said apprentice's time of service give (*him or her*).....suits of clothes, of the value of.....dollars, and.....dollars in current money of the United States.

(*If money is paid with the apprentice, (insert here)* and the same.....acknowledges receipt of.....dollars with said...., from (*his father or mother,*) as a compensation for his instruction, as above mentioned.

(*Or if wages are to be paid for the service of the apprentice, insert*) and said.....further agrees to pay said.....the following sums of money, to wit; for the first year of his service.....dollars; for every subsequent year until the expiration of his term of service.....dollars; which said payments are to be made on the.....day of.....in each year.

And for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves each unto the other.

In witness whereof, the parties aforesaid have hereunto set their hands the day and year first above written.

(*Signature of Apprentice.*)

(*Signature of Master.*)

(*Signature of Parent or Guardian.*)

See Text, § 28.

§138. Arbitration Contract.

Whereas a controversy is now existing and pending, between, of....., and....., of....., in relation to an ex-

change of....., made by and between the said parties, at the town of....., aforesaid, on the.....day of.....last past: Now, therefore, we, the undersigned.....and....., aforesaid, do hereby submit the said controversy to the arbitrament of.....,, and....., of....., or any two of them; and we do mutually covenant and agree, to and with each other, that the award to be made by the said arbitrators, or any two of them, shall, in all things, by us, and each of us, be well and faithfully kept and observed; provided, however, that the said award be made in writing, under the hands of the said.....,, and, or any two of them, and ready to be delivered to the said parties in difference, or such of them as shall desire the same, on the.....day of.....next.

Witness our hands and seals, this.....day of....., A. D. 19.....

In presence of
.....

.....(L. S.)
.....(L. S.)

See Text, § 29.

§139. Arbitration Contract.

We, the undersigned,of....., and of....., agree:
To submit a controversy now existing between us, in relation to an (*describe the subject-matter*), made between us at.....on the.....day of....., to.....and....., of.....or any two of them.

That the award to be made by said arbitrators, or any two of them, shall, in all things, by us and each of us, be well and faithfully kept and observed.

That said award shall be in writing, signed by each of said arbitrators, or any two of them, and ready to be delivered to said parties in difference, or either of them, on the.....day of.....

Witness our hands (*and seals*) this.....day of.....
(*Witnesses*). (*Signed*).....

See Text, § 29.

§140. Arbitration Contract.

We, the undersigned, hereby mutually agree to submit all our matters in difference, of every name or nature, to the award and determination of.....,, and....., for them to hear and determine the same, and make their award in writing, on or before the.....day of.....next.

Witness our hands, this.....day of....., 19.....

In presence of

.....

See Text, § 29.

§141. Assigned Claim Contract.

This agreement, made this day of, 19..., between, party of the first part, and, party of the second part:

Whereas, the said party of the second part has, by an instrument in writing bearing even date herewith, duly sold, assigned, transferred, and set and delivered over unto the said party of the first part, his executors, administrators, and assigns, certain claims and demands, and causes of action, against, Company, a corporation, and others, arising out of certain transactions in connection with the capital stock of the Company, a corporation, created and existing under and by virtue of the laws of the state of, and for any assessment or assessments paid thereupon, as will by reference to said assignment more fully appear:

Now this agreement witnesseth: That the said party of the first part hereunto, for and in consideration of the said premises, and of other good, valuable, and sufficient considerations, to him in hand duly paid and moving, the receipt of which is hereby acknowledged, doth hereby, for himself, his executors, administrators, and assigns, covenant and agree to pay over to the said party of the second part, his executors, administrators, or assigns, per centum of any sum, amount, or proceeds which may be received, collected, realized, or obtained by said party of the

first part, in, or by, or from any action or suit at law or in equity for, or on any compromise of, said claims and demands.

And the said party of the second part, in consideration of the premises, for himself, his executors, administrators, and assigns, doth hereby covenant and agree, that he or they will pay to the said party of the first part, his executors, administrators, or assigns, upon demand, any and all sum or sums of money which the said party of the second part, his executors, administrators, or assigns, may become liable for, or may be compelled to pay or expend for the taxable costs, disbursements, or allowances of the defendants, or so much thereof as may be incurred upon said claim, in any suit or action which may be brought by the said party of the first part, for the purpose of enforcing or collecting the said claims, and will fully indemnify and save harmless the party of the first part therefrom.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

In presence of

(Signature and seals.)

.....
.....

§142. Attorney and Client Contract.

(Grand Rapids & Ind. Ry. Co. v. Cheboygan Circuit Judge, 17 D. L. N. 270.)

"This agreement made and entered into this day of, by and between of, of the first part, and &, of, of second part:

"Whereas, said first party has this day retained second parties as attorneys to begin suit against & Railway Co., a corporation, for personal injuries received by said first party during, it is hereby agreed that said second parties, as their fees, shall receive one-half of whatever judgment or settlement they shall obtain from said Railroad Company, and in case first party does not recover judgment or obtain a settlement, then second parties shall receive

no pay for such services as they may render in said cause; and second parties shall have a lien on any judgment or money that may be obtained from said Railroad Company. First party to pay all witness fees, second party all other clerk and county fees.

In witness whereof the parties have hereunto set their hands and seals this day of, A. D. 19....

“.....(Seal)

“.....(Seal)”

See Text, §30.

§143. Auction Contract.

This agreement, made this.....day of....., between, purchaser, and....., auctioneer, witnesseth:

That.....has this day become the purchaser at public auction of the following described property, situated in....., to wit (*describing the premises*).

That said.....has this day paid unto said.....dollars of the purchase money therefor.

That said.....agrees to pay the remaining sum of..... dollars, purchase money therefor (*on the.....day of....., or upon the execution of a good and sufficient warranty deed, etc.*)

That said....., in consideration thereof, hereby covenants and agrees that the vendor.....shall execute and deliver saida good and sufficient warranty deed (with full covenants), for the premises above described, upon the payment of said remaining sum of.....dollars.

In witness whereof, said parties have hereunto set their hands, the day and year first above written.

§144. Author's Contract.

This agreement, made this.....day of.....19...., between, of....., author, party of the first part, and....., of, publisher, party of the second part.

Witnesseth, that said party of the first part, in consideration of the sum of.....dollars, agrees to sell, and does sell, to the party of the second part, the manuscript of a work, entitled....., written, and to be prepared for the press by him; and he, the said....., also agrees to examine and correct the proof-sheets thereof as they shall be furnished to him from time to time during the printing or stereotyping thereof. The said.....and his personal representatives and assigns are to have the exclusive right to take out and own the copyright, and the renewals of the copyright thereof. And the said....., for himself, his personal representatives and assigns, agrees to pay the said.....in the manner following:dollars on the signing of this contract,dollars when the whole copy, including the index, shall be ready for the printer, and the balance when the proof-sheets shall have all been corrected and returned to the printer; and also agrees to furnish to the said.....,bound copies of the work within a reasonable time after the said.....shall have completed his labors, the whole of said proof-sheets to be furnished the said.....within a reasonable time after the delivery of the manuscript.

And it is further agreed, that in case the said work shall fall short of.....pages of the size and style of the work known as....., exclusive of index and contents, then the said.....is to receive, and the said.....is to pay, a sum so much the less, in proportion to the actual number of pages; but in case said work shall contain more than.....pages, the sum to be paid therefor is not to be increased.

In witness whereof, the said parties have hereunto set their hands this.....day of.....A. D. 19.....

§145. Beet Sugar Contract. Planting.

(Wierman v. Bay City-Michigan Sugar Co., 142 Mich. 423.)

This agreement made and entered into this.....day of.....
A. D. 19.... by and between.....of.....party of the first

part, and.....of....., party of the second part, witnesseth:

"1. The said first party agrees to plant the seed furnished by said second party; that he will sow 15 pounds to the acre; that he will plant, cultivate, and harvest the beets raised by him under this contract, as he shall be from time to time directed by said second party, during the month of December or later. Beets to be delivered after the 1st of November must be pitted by first party. In harvesting said beets said first party will cut off the tops clean and square at the base thereof, so that no part of the stem, where leaves have grown, shall be left thereon. All seed furnished for planting beets under this contract shall be paid for at the rate of 15 cents per pound at and the amount for the same and any advances made by said second party to said first party shall be deducted from the first payment due for beets. In delivering beets, said first party will exercise due care to prevent stones, dirt, or other refuse to become mixed with the beets delivered either in wagons or cars.

"2. It is mutually agreed that the title to said crop of beets to be grown from seed furnished by said second party, and on the lands above described, shall vest in second party as soon as the crop begins to grow; but the amount to be paid to said first party shall be based solely upon the quantity of beets actually delivered in accordance with the terms of this contract. This provision is inserted in this contract for the express purpose of preventing any other person, persons, or companies from acquiring any interest in the title or right to the possession of said beets.

"3. It is further agreed that beets purchased under this contract shall be delivered to said second party's beet sheds in....., and shall be paid for as follows: Beets testing 12%, October delivery, \$......per ton; November delivery,per ton December or later delivery\$......per ton andcents per ton for each 1% more or less, for beets containing a greater or less amount of sugar. Payable on the 15th day of the month for beets delivered the previous month.

"6. In case second party's factory shall be destroyed by fire, or otherwise injured to prevent receiving beets, in such an event

all beets not delivered shall be properly cared for by first party and delivered as ordered by second party; such extra necessary expense of pitting and delivery to be borne by second party.

"7. No additions or alterations made by agents will be binding upon the second party.

In witness whereof the parties hereunto have set their hand and seal the day and year first above written.

In presence of

.....

.....Farmer.

.....Company.

§146. Beet Sugar Contract.

(Lingle v. Owosso Sugar Co., 139 Mich. 204.)

"Agreement concerning raising and delivery of..... for campaign of.....

"This agreement made this day of 19...., by and between..... (hereinafter called the grower, and..... Company, hereinafter called the Company).

Witnesseth, that the said parties each in consideration of the promises and agreements of the other, agreed as follows: The grower, during the year commencing with the spring of 19....is, in compliance with the terms hereof, to plant, cultivate, and harvest in a good and husbandlike manner for the company,.....toacres of....., on the following described lands, to wit: In section....., township of..... north, range..... in county of....., State of.....

"The.....shall be raised from seed furnished by the company. At least.....pounds of seed per acre shall be planted. Seed shall be paid for by the grower to the company at the rate of..... cents per pound, and payment therefor deducted from the first payment of.....delivered. The title to said seed and to said crop of.....from the time when the same begins to grow shall be and remain in the company.

"All directions given by the company as to the seeding, culti-

vating, harvesting, care, and delivering of.....shall be carefully followed and delivered by the grower. The company shall unload.....delivered in car-load lots without cost to the grower.

"The company shall pay for.....delivered at the rate of.... dollars and.....cents per ton for.....testing.....per cent. of.....and.....and.....cents per ton more for each..... per cent of increase above.....per cent, and.....and..... cents per ton less for each.....per cent. of decrease below.... per cent. The company will not be liable to receive or pay forcontaining less than.....per cent. of sugar, or for..... which are rotten or otherwise unfit or undesirable for making sugar. An additional price of.....cents per ton will be paid by the company for.....delivered after.....

"In case the company's factory shall be destroyed by fire or otherwise or from any cause so injured as to be incapacitated for work all.....not delivered shall be properly cared for by the grower and delivered as and where ordered by the company, and in that case any extra necessary expense of delivery shall be borne by the company.

"No agent of the company has any authority to change or alter the terms or conditions of this contract."

"It is hereby provided that in case said land is used for the production of....., said.....shall be delivered to the..... Company and an order shall be given to the party of the first part on said company for the proceeds to the amount of \$......the first year, \$......the second year, and \$...... the third year on or before.....of each year.

"And for the purpose of securing the payment of the said rent above reserved and taxes, the said party of the second part hereby covenants and agrees that the said party of the first part,heirs, executors, and assigns, shall have a lien in the nature and to the effect of a chattel mortgage upon all the produce of the said tillable land, whether harvested or not, and the said party of the second part hereby covenants and agrees to sell and mortgage to the said party of the first part..... heirs executors, administrators and assigns, the

said produce, and in case said party of the second part shall fail or neglect to pay the same as above covenanted and agreed, the said party of the first part, heirs, executors, administrators and assigns shall have the right and power to take the possession of the said produce wherever it may be found, and sell the same at private sale or public auction at the best prices.....can obtain therefor, after giving at least ten days' previous notice of the time and place of said sale by posting a written or printed notice thereof in three or more public places in said township of said county, and out of the money to arise from such sale thereof if sufficient there shall be to pay and retain the amount of said rent and taxes due, together with any and all costs and charges of such sale, and shall pay the surplus moneys, if any, to said party of the second part."

§147. Board, Lodging and Support Contract.

This agreement made and entered into this.....day of..... A. D. 19...., by and between.....of..... party of the first part, and.....of.....party of the second part, witnesseth:

That said.....shall let, and said.....shall hire, the following rooms in the dwelling-house, situated (*describing location*), to wit (*designate*).

That said rooms shall be properly lighted, heated, and supplied with hot and cold water, as follows:

.....room,.....Gas.....burners, capable of supplyingfeet per hour.

Heat, by register (*or steam or hot-water apparatus*) capable of supplying from.....to.....degrees of heat at pleasure and continuously.

Water, washstand (*or bath*), etc. in abundance in all seasons, hot water from.....a. m. to.....p. m. throughout the entire suite.

That said.....shall paint and paper said rooms as follows, viz:

That said shall furnish and provide all windows and hall-doors of said rooms with curtains, wire screens, and blinds.

That said shall provide all doors, windows, and blinds with safe and substantial locks and fastenings, retaining no duplicate keys of the same whatever.

That said shall furnish said rooms as follows: (*describing the furniture throughout each room.*)

That said shall provide a private bell at the main entrance of said building, and thereon furnish facilities for the engraved name of said to be substantially fixed.

That said shall at all times keep the halls and stairways leading to said rooms comfortably and neatly furnished, and free from all dirt and dust, and odors from cooking, laundry-work, and all and every impure or offensive smell, and at all times to keep the air therein fresh and pure, and that during the cold and chilly seasons of the year to keep the same warm and comfortable.

That said shall at all times keep the front walks, gutters, fences, yard, lawn, railing, shrubbery, and entrance of said dwelling clean and wholesome.

That said shall at all times neither permit nor allow any unwholesome accumulation of refuse, or rubbish, garbage, or decaying matter to accumulate or remain in, about, or upon said premises, or in any manner suffer or permit any uncleanness or noisome or unwholesome odors to pervade said premises by reason thereof.

That said shall deliver or cause to be delivered at said rooms all and every card, message, letter, paper, parcel, package, or other thing left to the address of said, or any member of his household, guests, visitors, or servants, forthwith, and without delay and without disturbing, going through or molesting the same.

That for any violation or material omission in providing all things herein agreed by said, of this agreement, said shall, upon notice in writing, make complete reparation, and in addition pay said double the amount of injury sustained

by reason thereof; or the same shall thereafter be retained out of the rents hereinafter mentioned.

That in case of controversy over the amount of injury sustained, or any part of this agreement omitted, then said..... and..... may each of them choose one disinterested person, who may select a third, the decision of which, or any two of them, shall in such matter be binding and final.

That if said..... shall fail to designate such person, then the one selected by said..... shall select another in the same manner and with like effect as said..... should have done, and thereafter proceed in like manner and with like effect as aforesaid.

That said..... shall in consideration thereof pay said..... the yearly rent of..... dollars, payable (*monthly or quarterly, in advance, or otherwise*) as follows: (*State as the case may be*).

In witness whereof the parties hereunto have set their hands the day and year first above written.

See Text, § 32.

§148. Board, Lodging and Support Contract. Between House-keeper and Lodger.

This agreement, by and between....., of....., and....., of....., made the..... day of....., witnesseth: That the said....., in consideration of the agreement hereinafter contained, to be performed by....., has let to the said..... the entire first floor, and one room in the..... story, or....., with the use of the....., and of the yard for drying linen, or beating carpets or clothes, being part of the dwelling-house now occupied by the said....., situate in the village of....., (*or, known as number..... in..... street, in the city of.....*.....,) for and during the term of..... years from the day of date hereof; to hold to the said....., for the said term of..... years, at the yearly rent of..... dollars, payable quarterly to the said..... In consideration of the premises, agrees to pay to the said....., the aforesaid yearly rent of..... dollars, at the times above limited for the payment thereof; and at the end of the said term, or in case of any default in the

payment, to yield and deliver up to the said, or his assigns, on request, the quiet and peaceable possession of the premises above described, and leave them in as good condition and repair as they shall be on his taking possession thereof, reasonable wear excepted.

In witness whereof the said parties have hereunto set their hands this day of A. D. 19

See Text, § 32.

§149. Board, Lodging and Support Contract. Support of Insane Persons.

(Wetmore v. Aldrich, 10 Mich. 515.)

"Whereas,, of the town of, in the county of,, an insane person, has been admitted as a patient in the Asylum, at Now, therefore, we, the undersigned, in consideration thereof, bind ourselves to, treasurer of said asylum, to pay to him, and his successors in office, the sum of dollars cents per week, for the care and board of said insane person, as long as he shall continue in said asylum, with such extra charges as may be occasioned by his requiring more than ordinary care and attention, and also to provide him with suitable clothing, and to pay for all such necessary articles of clothing as shall be procured for him by the steward of the asylum. And to remove him from the asylum whenever the room occupied by him shall be required for a class of patients having preference by law. And if he shall be removed at the request of his friends, before the expiration of calendar months after reception, then we engage to pay board for weeks, unless he shall be sooner cured, and also to pay, not exceeding dollars, for all damages he may do to the furniture or other property of said asylum, and for reasonable charges in case of elopement, and funeral charges in case of death. Such payments for board and clothing to be made semi-annually, on the days of and, in each year, and at the time of removal, with interest on each bill from and after the time it becomes due.

"In witness whereof, we have hereunto set our names this
day of, in the year

"
Guardian for

"

See Text, § 32.

§150. Board, Lodging and Support Contract.

(Campau v. Chene, 1 Mich. 401.)

Before the undersigned witnesses, was present,
of the township of, county of, in
the state of, who acknowledges to have sold, con-
veyed and made over, and by these present do sell, convey and
make over, and from this day and forever, to
his son-in-law, the present accepting purchaser, for himself, his
heirs and assigns, the farm or land on which the said
now lives, together with all the movables, consisting in the
articles mentioned and specified in the annexed inventory to these
presents; also all the buildings thereon erected, seeds in the
earth, etc. In a word, all that is now to be found on said farm,
without excepting nor reserving anything whatsoever, for and
in consideration of the sum of dollars, legal
currency of the United States; that the said,
promises and obligates himself to pay in the manner following,
viz: The said binds himself to pay the
debts of the said, especially a mortgage
that the said holds against said farm;
and when the debts are paid, if any balance remain, the same
shall be paid to said, or to his heirs, by
giving to said a good and lawful dis-
charge therefor; it being well understood that said
is from this time answerable for these debts; and that, should he
neglect to discharge them immediately, he will be bound to pay
all damages and interest accruing therefrom. The said
promises and obligates himself, besides the payment of the said
., to board, lodge and clothe the said

....., in health and in sickness, in a reasonable and decent manner during his natural life, and after his decease to cause him to be buried decently, and have the usual prayers of the church said.

The said reserves to himself the right to live with the said, his son-in-law or with any other person he may please; and, in the latter case, the said shall be bound to pay him a reasonable board, and continue to furnish him the necessary and proper clothing, as well as to have him attended to in case of sickness; as long as the said shall live with the said, his son-in-law, he will, in no wise, be obliged to work, and if he does it, it will be of his own will and accord.

The said further promises and obligates himself to keep, at his house, to board and clothe her decently, until she has reached her majority, that is, eighteen years complete.

And for the security of the said payment of dollars, in the manner above mentioned, and for the fulfilling of the clauses and conditions here above expressed, the said cannot give, alienate, exchange or sell the said farm or land, nor all the movable articles mentioned and specified in the said inventory, without the permission or assent of the said, and the whole shall remain and stand hypothecated till the payment in full of said dollars.

The said farm or land is the same that said had from his father and mother, and is described as follows, to-wit:

It is well understood, stipulated and agreed between the parties, that the said assumes only to pay the debts contracted to this day by the said, not exceeding the said sum of, and that he will not be bound to pay any debts that the said may contract after the date of these presents. That the said

....., in paying the above debts, shall take receipts from the different creditors, and that said will receive the said acquittances in payment of the above sum of dollars, and that when the said payment is made in full, the said, his heirs or assigns, shall be bound to appear at the office of the register of the county, to release the present mortgage in a legal manner.

In witness whereof we have hereunto set our hands and seals this day of, A. D. 19....

See Text, § 32.

§151. Board of Trade Contract. Wheat.

It is agreed by and between.....and....., of....., that he, the said....., in consideration of.....bushels of wheat sold to him this day by the said....., and by him agreed to be delivered to the said....., free of charges and expenses whatsoever, at....., on or before the.....next, shall and will pay, or cause to be paid, to the said....., or his assigns, within three months after such delivery the sum of.....

And the said....., in consideration of the agreement aforesaid, of the said....., doth promise and agree, on or beforeaforesaid, at his own proper expenses, to send in and deliver to the said....., or his assigns, the said.....bushels of wheat so sold him as aforesaid, and that he, the said....shall and will warrant the same to be good, clean, and merchantable grain.

In witness whereof the parties hereto have set their hands thisday of.....19...., at.....M.

See Text, § 33.

§152. Board of Trade Contract. A Put.

For value received the bearer may deliver..... shares of thestock of the.....Company, at.....per cent., at any time in.....days from date.

All dividends for which transfer-books close during said time,

go with the stock; one day's notice required, except last day.

Expires.....19....., at.....M.

See Text, § 33.

§153. Board of Trade Contract. A Call.

For value received, the bearer may call on.....for..... shares of the.....stock of the.....Company, at..... per cent., at any time in.....days from date.

All dividends for which transfer-books close during said time, go with the stock; one day's notice required, except last day.

Expires....., 19....., at.....M.

See Text, § 33.

§154. Board of Trade Contract. A Spread.

For value received, the bearer may call on the undersigned forshares of the....., at.....per cent., any time in..... days from date.

Or, the bearer may, at his option, deliver the same to the undersigned at.....per cent., any time within the period named.

All dividends or extra dividends declared during the time are to go with the stock in either case, and this instrument is to be surrendered upon the stock being either called or delivered.

Expires....., 19....., at.....M.

See Text, § 33.

§155. Building and Construction Contract. On Proposal.

Whereas, By advertisement, duly made and published (according to law), proposals were asked for furnishing all of the labor and materials for the work herein provided for; and

Whereas, The proposal of.....furnished in response thereto, was duly accepted, as hereinafter stated, on condition that he execute a contract in accordance with the terms of said bid

Now, Therefore, This Agreement, made and entered into by and between....., Secretary of the....., for and in behalf of the....., of the first part, and.....

.....

.....of the second part.

Witnesseth: That the party of the second part, for the consideration hereinafter mentioned, covenants and agrees to and with the party of the first part to furnish all of the labor and materials and do and perform all the work required.....

.....in strict and full accordance with the requirements of drawings numbered

.....and such other detail drawings as may be furnished to the Party of the second part by the Supervising Architect of the.....

.....; the advertisement for proposals, dated19...; the specification for the work; the proposal dated

.....19....., addressed to the.....

.....accepting said proposal;

.....a true and correct copy of each of which said papers is attached hereto and forms a part of this contract; and which said numbered drawings, bearing the signature of the said Supervising Architect and the signature of the said party of the second part, are on file in the office of the Supervising Architect of.....

.....and are hereby made part of this contract.

And the said party of the second part further covenants and agrees that the work herein agreed to be performed shall be commenced promptly upon receipt of notice of the approval of the bond thereto attached, and that the same shall be carried on in such order and at such times and seasons, and with such force as shall from time to time be directed or prescribed by the Supervising Architect or his representative, and that the same shall be completed in all its parts within.....

.....from the date of the approval of said bond hereto attached; that all materials used shall be of the very best quality of their respective kinds; that all the work performed

shall be executed in the most skilful and workmanlike manner, and that both the materials used and the work performed shall be in every respect to the entire and complete satisfaction of the Supervising Architect.

And the said party of the second part expressly covenants and agrees that the bond hereto attached shall be security, also, for the satisfactory performance and fulfilment of all the guarantees set forth in or required by said specification.

.....

It is expressly covenanted and agreed by and between the parties hereto that time is and shall be considered as of the essence of the contract on the part of the party of the second part, and in the event that the said party of the second part shall fail in the due performance of the entire work to be performed under this contract, by and at the time herein mentioned or referred to, the said party of the second part shall pay unto the party of the first part, as and for liquidated damages, and not as a penalty, the sum of.....dollars for each and every day the said party of the second part shall be in default, which said sum of.....dollars per day, in view of the difficulty of estimating such damages with exactness, is hereby expressly fixed, estimated, computed, determined and agreed upon as the damages which will be suffered by the party of the first part by reason of such default, and it is understood and agreed by the parties to this contract that the liquidated damages hereinbefore mentioned are in lieu of the actual damages arising from such breach of this contract; which said sum the said party of the first part shall have the right to deduct from any moneys in his hands otherwise due, or to become due, to the said party of the second part, or to sue for and recover compensation or damages for the non-performance of this contract at the time or times herein stipulated or provided for.

The party of the second part further covenants and agrees to hold and save the, its officers, agents, servants and employees, harmless from and against all and every demand, or

demands, of any nature or kind, for, or on account of, the use of any patented invention, article, or appliance, included in the materials hereby agreed to be furnished under this contract.

It is further covenanted and agreed by and between the parties hereto that the said party of the second part will, without expense to the, comply with all the municipal building ordinances and regulations, in so far as the same are binding upon the, and obtain all required licenses and permits, and be responsible for all damages to person or property which may occur in connection with the prosecution of the work; that all work called for by the drawings and specifications, though every item be not particularly shown on the first or mentioned in the second, shall be executed and performed as though such work were particularly shown and mentioned in each, respectively, unless otherwise specifically provided; that all materials and work furnished shall be subject to the approval of the said Supervising Architect; and that said party of the second part shall be responsible for the proper care and protection of all materials delivered and work performed by said party of the second part until the completion and final acceptance of same.

It is further covenanted and agreed by and between the parties hereto that the said party of the second part will make any omissions from, additions to, or changes in, the work or materials herein provided for whenever required by said party of the first part, the valuation of such work and materials to be determined on the basis of the contract unit of value of material and work referred to, or, in the absence of such unit of value, on prevailing market rates, which market rates, in case of dispute, are to be determined by the said Supervising Architect, whose decision with reference thereto shall be binding upon both parties; and that no claim for damages, on account of such changes or for anticipated profits, shall be made or allowed.

It is further covenanted and agreed that no claim for compensation for any extra materials or work is to be made or allowed, unless the same be specifically agreed upon in writing or directed in writing by the party of the first part; and that no addition to,

omission from, or changes in the work or materials herein specifically provided for shall make void or affect the other provisions or covenants of this contract, but the difference in the cost thereby occasioned, as the case may be, shall be added to or deducted from the amount of the contract; and, in the absence of an express agreement or provision to the contrary, no addition to, or omission from, or changes in the work or materials herein specifically provided for shall be construed to extend the time fixed herein for the final completion of the work.

It is further covenanted and agreed by and between the parties hereto that all materials furnished and work done under this contract shall be subject to the inspection of the Supervising Architect, the superintendent of the building, and of other inspectors appointed by the said party of the first part, with the right to reject any and all work or material not in accordance with this contract; and the decision of said Supervising Architect as to quality and quantity shall be final. And it is further covenanted and agreed by and between the parties hereto that said party of the second part will without expense to the within a reasonable time to be specified by the Supervising Architect, remedy or remove any defective or unsatisfactory material or work; and that, in the event of the failure of the party of the second part immediately to proceed and faithfully continue so to do said party of the first part may have the same done and charge the cost thereof to the account of said party of the second part.

It is further covenanted and agreed by and between the parties hereto that until final inspection and acceptance of, and payment for, all of the material and work herein provided for, no prior inspection or payment or act is to be construed as a waiver of the right of the party of the first part to reject any defective work or material or to require the fulfilment of any of the terms of the contract.

It is further covenanted and agreed that the party of the first part shall have the right to require that any particular portion of the work herein provided for shall be completed within such time

as may be hereafter definitely specified by the said party of the first part in written notice to the said party of the second part; and that should the said party of the second part fail to complete such particular portion of the work within the time so specified, or fail to complete the entire work contemplated by this contract within the time or times herein stipulated or provided for; or fail to prosecute said work with such diligence as in the judgment of the party of the first part will insure the completion of the said work within the time hereinbefore provided, the said party of the first part may withhold all payments for work in place until final completion and acceptance of same and is authorized and empowered, after eight days' due notice thereof in writing, served personally upon or left at the shop, office or usual place of abode, or with the agent of the said party of the second part, and the said party of the second part having failed to take such action within the said eight days as will, in the judgment of the said party of the first part, remedy the default for which said notice was given, to take possession of the said work in whole or in part and of all machinery and tools employed thereon and all materials belonging to the said party of the second part delivered on the site, and, at the expense of said party of the second part, to complete or have completed the said work, and to supply or have supplied the labor, materials and tools, of whatever character necessary to be purchased or supplied by reason of the default of the said party of the second part; in which event the said party of the second part shall be further liable for any damage incurred through such default and any and all other breaches of this contract.

It is further covenanted and agreed that the said party of the first part shall have the right of suspending the whole or any part of the work herein contracted to be done, whenever, in the opinion of the Supervising Architect, it may be necessary for the purposes or advantage of the work, and upon such occasion or occasions the said party of the second part shall, without expense to the, properly cover over, secure and protect such of the work as may be liable to sustain injury from the

weather, or otherwise; provided that for all such suspensions and other delays caused by the said party of the first part the party of the second part shall be allowed one day additional to the time herein stated, for each and every day of such delays so caused, in the completion of the contract, the same to be ascertained by the Supervising Architect; provided, that no claim shall be made or allowed to the said party of the second part for any damages which may arise out of any delay caused by the said party of the first part.

And the said party of the first part, acting for and in behalf of the, covenants and agrees to pay, or shall cause to be paid, unto the said party of the second part, or to the heirs, executors, administrators, or successors, of the said party of the second part, in lawful money of the United States, in consideration of the herein recited covenants and agreements made by the party of the second part, the sum of

And the party of the first part covenants and agrees that payments will be made in the following manner, viz: ninety per cent of the value of the work executed and actually in place, to the satisfaction of the party of the first part, will be paid from time to time as the work progresses (the said value to be ascertained by the party of the first part), and ten per cent thereof will be retained until the completion of the entire work, and the approval and acceptance of the same by the party of the first part, which amount shall be forfeited by said party of the second part in the event of the nonfulfilment of this contract; it being expressly covenanted and agreed that said forfeiture shall not relieve the party of the second part from liability to the party of the first part for any and all damages sustained by reason of any breach of this contract; provided, however, that no payment hereunder shall be due to the said party of the second part until every part of the work to the point of advancement reached—on account of which payment is claimed—shall be found to be satisfactorily supplied and executed in every

particular and any and all defects therein remedied to the entire satisfaction of the said party of the first part.

It is an express condition of this contract that no member of Congress, or other person whose name is not at this time disclosed, shall be admitted to any share in this contract, or to any benefit to arise therefrom; and it is further covenanted and agreed that this contract shall not be assigned.

In Witness Whereof, The parties hereto have hereunto subscribed their names this day of....., A. D. 191.....

See Text, § 36.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That we.....

 of the City of, County of, and
 State of, principal, and
 of the City of.....,
 County of, and State of,
 and of the City of.....,
 County of, and State of,
 suret..., are held and firmly bound unto
 in the sum of
 (\$) lawful money of the, for the pay-
 ment of which, well and truly to be made to the United States,
 we bind ourselves, our heirs, executors, administrators, succes-
 sors, and assigns, jointly and severally, firmly by these presents

(Sealed with our seals and dated this)
 day of, A. D. 19.....

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That
 whereas the said ha.... entered into
 a certain contract, hereto attached, with
 acting for and in behalf of, bearing date the
 day of, A. D. 19.....: Now,
 if the said

shall well and truly fulfil all the covenants and conditions of said contract, and shall perform all the undertakings, therein stipulated by to be performed, and shall well and truly comply with and fulfil the conditions of, and perform all of the work and furnish all the labor and materials required by, any and all changes in or additions to, or omissions from, said contract which may hereafter be made, and shall perform all the undertakings stipulated by to be performed in any and all such changes in, or additions thereto, notice thereof to the said suret...., being hereby waived, and shall promptly make payment to all persons supplying labor or materials in the prosecution of the work contemplated by said contract, then this obligation to be void; otherwise, to remain in full force and virtue.

In Testimony Whereof, The said

 principal, and
 and, suret....,
 have hereunto subscribed their hands and affixed their seals the day first above written.

(Signed, sealed and delivered in presence of)

.....

SPECIFICATIONS.

CONTRACT DRAWINGS. The drawings which will with this specification form the basis of an agreement for the erection and completion of a residence for, to be are numbered 1, 2, 3, 4, 5, 6, 7, to a scale of $\frac{1}{4}$ inch to the foot; and details 20, 21, 22, 23 to a scale of $1\frac{1}{2}$ inches; and all materials and work necessary to complete the structure indicated are to be furnished and done by the Contractor.

DETAIL DRAWINGS. Full-sized details and models will be furnished as the work progresses, and no work requiring them is to be done before their delivery. In their preparation, minor modifications will be made which do not materially affect the cost of execution; and they will be delivered to the Contractor within the following periods after the award of the contract: those which affect the construction of exterior walls, cornice, roof, or internal framing, six weeks; those for interior finish, four months; those for carving on material in place, six months.

CHANGES. No alterations shall be made involving change in cost, unless ordered by the architect in writing, setting forth fully the nature and extent of the change, the terms and conditions under which it is to be made, to which the assent of both Owner and Contractor is to be attached.

The Architect will, during the progress of the work, give oral directions relative thereto; but such directions will never be considered as authorizing changes.

ACCEPTED AND REJECTED MATERIALS. The decision of the Architect will be final relative to the work or materials furnished, and that rejected is to be removed promptly from the site. It will be understood, however, that every item furnished in place in the building which is covered by a payment, is considered as accepted, and will not be later rejected unless defects develop which were not visible prior to the payment; and when, for such cause, material is rejected, the entire expense incident to replacing the material is to be borne by the Contractor.

RESPONSIBILITY OF CONTRACTOR. The Contractor is to be entirely responsible for producing the finished work in place; and in carrying it out, he is to furnish all tools and temporary appliances to accomplish the contract requirements, and also heat, so that after the first plaster coat is begun no part of the building shall be allowed to have a temperature lower than 40° F. If plastering is done in hot, dry weather, he is to protect the building with such temporary closures as will prevent injury

from the rapid evaporation. He is to be responsible for the protection, not only of all material delivered on the site, but also of all materials in place, until the final acceptance of the building as evidenced by the final payment on the contract and the delivery of the structure to the Owner. As this responsibility extends to loss by fire, he is to keep the building fully insured in, the loss, if any, payable to the owner as his interest may appear; the total amount of such insurance shall never be less than a sum per cent higher than the total amount of the payments made; and prior to each payment, the Contractor shall deliver to the Owner such policies. The Contractor shall, if required by the Owner four days prior to the time any payment is due, produce evidence satisfactory to the Owner that such settlements have been made as will clear the premises from the liability of liens on account of either labor or materials furnished; and in case the Contractor fails to produce such evidence, the Owner is not under any obligations to make the payment until his demand is complied with. If the demand is not made by the Owner four days prior to the day any payment is due, the Contractor will not be obliged to furnish evidence for the payment then coming due; but the right to demand the evidence before any subsequent payment is made will continue to exist, so that the Owner may demand such evidence prior to any future payment.

CITY LAWS. The Contractor, without the intervention of either Owner or Architect, is to comply with all City Ordinances for the regulation of building on private property and the temporary use of highways beyond the building lines.

EMPLOYER'S LIABILITY INSURANCE. Should any person either employed by him or not, or any property, be injured in any of the operations in connection with the building or through his carelessness or that of any of his employees, he is to be responsible therefor; and therefore he is to carry at all times Employer's Liability Insurance which will cover up to \$. the damage to any one person, either of the public or of those in his employ.

LADDERS AND SCAFFOLD. The Contractor is to maintain at all times such ladders and scaffolding as will afford the Owner or Architect access to all portions of the work.

SAMPLES. As soon as possible after the award of the contract the Contractor is to deliver on the site samples of all materials required in connection therewith. Such samples are to indicate the range in connection therewith. Such samples are to indicate the range he proposes to use, by one of the poorest quality and one of the best in each class, with the understanding that the material furnished is to run between the two so that the average of the material furnished will be practically the average between the two samples.

The Architect will pass on these samples; and after acceptance by him, they will be kept for guidance in passing on the material when delivered. If any of the samples, in the opinion of the Architect are not in accord with the contract requirements, he will reject such in writing, setting forth fully his reasons, and the Contractor is to furnish additional samples in lieu of those rejected, until materials suitable in the judgment of the Architect are submitted. In executing the work, the poorer materials are to be placed in the minor portions of the work as selected by the Architect.

CONTRACTOR'S FOREMAN. The Contractor is to have a representative fully empowered to act in all cases for him on the site whenever any work is in progress or material being delivered; and neither the Owner nor the Architect will give to anyone, except such representative, any directions or instructions. Should such representative not give proper attention to such directions or instructions, such neglect will be sufficient cause for refusal on the part of the Owner to make further payments until the settlement of the questions involved.

The protection by the Contractor, of trees, sidewalk, curb, adjoining property, etc., as required hereinafter, will not relieve the Contractor from responsibility for any injury which may

occur to such protected items on account of the building operations.

THE DRAWINGS. It is the intention that the general scheme for the work shall be illustrated by the drawings on which all dimensions and sizes are given. When features or details are evidently of a similar nature to those already shown, they will not be carried out in detail; but in all such cases the Contractor will complete the work in accordance with the evident intent of the drawings.

The materials are in general designated; and when the drawings are competent to show fully what is required, it will not be within the province of the specification, or details to be prepared later, to make further reference thereto.

THE SPECIFICATION. It is the intention that this specification shall cover those material points only which the drawings are not competent to cover; and the fact that certain items are indicated on the drawings, and not mentioned herein, will not relieve the Contractor from furnishing them. It is the intention that the drawings and this specification shall so co-operate that all matters in connection with the proposed structure necessary for making accurate estimates for the completion of the building, shall be fully set forth. There are, however, certain operations and materials evidently necessary for the construction and unless these are of unusual nature, no mention thereof will be made, but such fact will not relieve the Contractor from his obligation to provide for all such items.

THE ARCHITECT. The Architect is the technical adviser for the Owner, and will have the general direction and oversight of the building operations, with the right conceded by both Owner and Contractor to accept or reject finally materials or workmanship, to decide the amount due at each payment period, and to determine when the Contractor has complied with the conditions of his agreement.

He is not to be responsible for such items as whether or not

liability for liens exists, or for such other matters of business detail as do not require the technical training for architectural practice.

As the Architect must depend on the clear requirements of the drawings and specifications for his authority in exercising his duties, it is desirable that all questions which may arise be fully settled therein, so far as practicable, before the submission of bids. Therefore, all parties who propose to submit bids should, in writing, call attention to any points which in their judgment are not fully explained by the drawings and specifications, at least six days before that set for receipt of proposals; and such questions, with the replies thereto, will be forwarded to each prospective bidder; and the failure of any bidder to ask for such supplementary information will be construed, after the award of the contract, as barring him from demurring from any ruling which in the opinion of the Architect is justified by the contract requirements. In any questions of a technical character which may arise between the Owner and Contractor, the Owner will be governed by the decision of the Architect.

PAYMENTS. Before the work, the Contractor, if he so desires, can prepare for the Architect a statement showing the order in which he will proceed with the construction of the building; and a schedule of the quantities of all items entering into the work, with the value of each in place—the total of such values to be the contract price. If, in the judgment of the Architect, this schedule is perfectly fair, it will be adopted as a basis of the monthly estimate of the value of the work satisfactorily in place; and on the 3rd day of each month, the Owner will pay on the contract price 90 per cent of the value of the materials satisfactorily in place on the 1st, as determined by the schedule; but in these estimates, no account will, under any circumstances, be taken of the value of materials not finally incorporated in the building.

If, however, the Contractor does not elect to prepare such a schedule, or prepares a schedule evidently not fair to the Owner,

then the Owner will pay to the Contractor on the 3rd of each month 90 per cent of the value of the materials satisfactorily in place, as determined by the Architect's estimate; and in determining the value, the Architect is to be governed by the total contract price, so that at all times there will be reserved by the Owner sufficient funds to complete the building, in case of default on the part of the Contractor, at usual market rates, and in addition 10 per cent.

TIME. The time limit for the completion of the work will be nine months from the date of award of contract; and it will be a condition of the contract, that there will be deducted from the final payment the sum of fifteen dollars as liquidated damages for each days' delay after the expiration of such period, until the final acceptance of the work by the Architect and its delivery to the Owner.

THE SITE. Put a tight board fence 5 feet high, with three 2-inch by 4-inch rails, and with 4-inch by 4-inch posts set 6 feet on centers which will protect adjoining property from encroachments during building operations.

On the street side, and in front of the spot to be occupied by the building on the avenue, enclose such portion of the roadway as is permitted by the City building ordinance to be used in building operations, with such fence—also place such walks—as are required by such ordinance.

On the site is one oak tree, and in the street two elm trees. These are to be protected by tree boxes of 2-inch plank and 2-inch by 4-inch cleats, with such holes cut on sides as will permit a full circulation of air about the trunk; and under no circumstances are any guy ropes to be secured to, or allowed to interfere with any portion of the trees.

There will be no attempt to save any of the sod or shrubs now on the site, and the Contractor will be allowed all the space for piling material, etc.

EXCAVATION. Four test-pits have been dug to a point 1 foot below the bottom of all footings; and bidders should visit the

site and examine the conditions. The black soil which constitutes the top stratum is all to be piled on the lot wherever the Contractor desires, so long as it is not against the oak tree. Below the black soil is a stratum of sand which is satisfactory for concrete and cement mortar; below this is coarse gravel which may be used for concrete, provided all stones which will not pass through a 2-inch ring are cracked to such size. Any other material to be taken from the excavation is worthless, and must be hauled away.

The excavation is to be carried on so that different strata will be kept in separate piles. Any materials mixed so as to make it undesirable in the opinion of the Architect to use them for the purposes above designated, are to be hauled away.

The curbstone in place is to be protected so that there will be no settlement or shifting before the supporting wall is completed, by sheet piling driven down just back of the inside of curb line.

The other sides of the excavations will be sloped enough to prevent caving.

The excavation will not go below the party wall of adjoining building.

All excavation for footing must be complete before any footings are placed.

BACKFILLING. After all foundation walls are completed and thoroughly set, backfilling is to be done with sand or gravel.

SEWER AND WATER CONNECTIONS. The sewer and water have already been brought on to the site. The sewer terminates at a brick manhole, 3 feet, 6 inches inside diameter, with iron cover at grade about 5 feet from the side line of the building; and temporary connections with this manhole are to be made, so that there shall be at no time any standing water in the excavation, should it develop that the gravel is a water-bearing stratum.

The water connections will be encountered in making the wall at the curb line, about 4 feet below grade.

PROPOSAL SHEET.

.....the undersigned hereby proposes to
 construct a dwelling for.....
 in strict accordance with drawings numbered.....
 and the foregoing specifications for the sum of.....
 \$.....

If light colored sand stone or lime stone is
 substituted for all face brick and ornamental
 terra-cotta following the same outline, add.... \$.....

If two months more time is allowed for the
 construction, deduct \$.....

If in the upper stories plain oak is substituted
 for painted pine, add \$.....

Signed.....

§156. Building and Construction Contract. Building.

AN AGREEMENT entered into this day of,
 19..., by and between.....of....., Owner, party of
 the first part, and....., also of....., Builder,
 party of the second part:

Witnesseth: That the said party of the second part, for and
 in consideration of the sum of.....
 in payments as set forth in the specification, agrees to construct
 a city dwelling for the said party of the first part, at.....
 of in accordance with drawings numbered
 and specifications all prepared therefor by
Architect.

Which drawings and specifications are a part of and the basis
 of this agreement.

In consideration of the foregoing, the said party of the first
 part agrees to pay to the said party of the second part the full
 sum of Dollars, in payments and
 under conditions as fully set forth in the specification.

In witness of the foregoing, the parties aforesaid here set their hands and seals to this and one other instrument of like tenor and date, this.....day of....., 19.....

....., Owner (Seal)

....., Builder (Seal)

In presence of

.....

Should changes be necessary, a supplementary agreement in the following form should be prepared for the signature of both parties:

Whereas:, Owner, did, on the day of, 191..., enter into an agreement with Builder, for the erection of a dwelling in accordance with drawings and specifications prepared therefor by, Architect, as fully set forth in such agreement; and

Whereas: it is the desire of said, Owner, to make certain changes as fully set forth as follows:

.....
.....

The said, Builder, agrees to make such changes and make all necessary modifications in the work necessarily incident thereto, for the sum of....., as an addition to the original contract price for the work, it being understood that no additional time is to be required in the completion of the work on account of these changes.

And the said, Owner, agrees to pay the additional sum of Dollars on account of these changes.

In witness of the foregoing, the parties above said have set their hands and seals to this and one other instrument of like

tenor and date this.....day of....., 19....

....., Owner (Seal)

....., Builder (Seal)

In presence of

.....

.....

The above agreement has been duly noted by me,

....., Architect.

See Text, § 36.

§157. Building and Construction Contract. Between Owner and Builder.

(This form was adopted and recommended for general use by the American Institute of Architects and the National Association of Builders.)

This agreement, made the
in the year one thousand nine hundred and.....
by and between
party of the first part (hereinafter designated the Contractor)
and

party of the second part (hereinafter designated the Owner).

Witnesseth that the Contractor in consideration of the agreements herein made by the Owner, agrees with the said Owner as follows:

Article 1. The Contractor shall and will provide all the material and perform all the work for the.....

.....
as shown on the drawings and described in the specifications prepared by

.....
Architect, which drawings and specifications are identified by the signatures of the parties hereto, and become hereby a part of this contract.

Art. II. It is understood and agreed by and between the parties hereto that the work included in this contract is to be done under the direction of the said Architect, and that.....

decision as to the true construction and meaning of the drawings and specifications shall be final. It is also understood and agreed by and between the parties hereto that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done are to be furnished by said Architect, and they agree to conform to and abide by the same so far as they may be consistent with the purpose and intent of the original drawings and specifications referred to in Art. I.

It is further understood and agreed by the parties hereto that any and all drawings and specifications prepared for the purposes of this contract by the said Architect are and remain property, and that all charges for the use of the same, and for the services of said Architect, are to be paid by the said Owner.

Art. III. No alterations shall be made in the work except upon written order of the Architect; the amount to be paid by the Owner or allowed by the Contractor by virtue of such alterations to be stated in said order. Should the Owner and Contractor not agree as to amount to be paid or allowed, the work shall go on under the order required above, and in case of failure to agree, the determination of said amount shall be referred to arbitration, as provided for in Art. XII of this contract.

Art. IV. The Contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the Architect or authorized representatives; shall, within twenty-four hours after receiving written notice from the Architect to that effect, proceed to remove from the grounds or buildings all materials condemned by whether worked or unworked, and to take down all portions of the work which the Architect shall by like written notice condemn as unsound or improper or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

Art. V. Should the Contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute

the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Architect, the Owner shall be at liberty after days' written notice to the Contractor, to provide any such labor or materials, and to deduct the cost thereof, from any money then due or thereafter to become due to the Contractor under this contract; and if the Architect shall certify that such refusal, neglect or failure is sufficient ground for such action, the Owner shall also be at liberty to terminate the employment of the Contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the Contractor shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Owner in finishing the work, such excess shall be paid by the Owner to the Contractor; but if such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the Architect, whose certificate thereof shall be conclusive upon the parties.

Art. VI. The Contractor shall complete the several portions, and the whole of the work comprehended in this agreement by and at the time or times hereinafter stated, to wit:

.....

Art. VII. Should the Contractor be delayed in the prosecution or completion of the work by the act, neglect or default of the Owner, of the Architect, or of any other contractor employed

by the Owner upon the work, or by any damage caused by fire, lightning, earthquake, cyclone or other casualty for which the Contractornot responsible, or by strikes or lockouts caused by acts of employes, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid, which extended period shall be determined and fixed by the Architect; but no such allowance shall be made unless a claim therefor is presented in writing to the Architect within forty-eight hours of the occurrence of such delay.

Art. VIII. The Owner agrees to provide all labor and materials essential to the conduct of this work not included in this contract in such manner as not to delay its progress, and in the event of failure so to do, thereby causing loss to the Contractor, agrees thatwill reimburse the Contractor for such loss; and the Contractor agrees that ifshall delay the progress of the work so as to cause loss for which the Owner shall become liable, thenshall reimburse the Owner for such loss. Should the Owner and Contractor fail to agree to the amount of loss comprehended in this Article, the determination of the amount shall be referred to arbitration as provided in Article XII of this contract.

Art. IX. It is hereby mutually agreed between the parties hereto that the sum to be paid by the Owner to the Contractor for said work and materials shall be

 subject to additions and deductions as hereinbefore provided, and that such sum shall be paid by the Owner to the Contractor, in current funds, and only upon certificates of the Architect, as follows:

The final payment shall be made withindays after the completion of the work included in this contract, and all payments shall be due when certificates for the same are issued.

If at any time there shall be evidence of any lien or claims for which, if established, the Owner of the said premises might become liable, and which is to operate as a notice is chargeable to the Contractor, the Owner shall have the right to retain out of any payment then and therefore due, the Contractor to hold against such lien or claim. Should there prove to be any such claim after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the Contractor's default.

Art. X. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

Art. XI. The Owner shall during the progress of the work maintain insurance on said work, in.....own name and in the name of the Contractor, against loss or damage by fire, lightning, earthquake, cyclone or other casualty. The policies to cover all work incorporated in the building, and all materials for the same in or about the premises, and shall be made payable to the parties hereto, as their interest may appear.

Art. XII. In case the Owner and Contractor fail to agree in relation to matters of payment, allowance or loss referred to in Arts. III or VIII of this contract, or should either of them dissent from the decision of the Architect referred to in Art. VII of this contract, which dissent shall have been filed in writing with the Architect within ten days of the announcement of such decision, then the matter shall be referred to a Board of Arbitration consisting of
.....in behalf of the Owner, and
.....in behalf of the Contractor
these two to select a third. The decision of any two of this Board shall be final and binding on both parties hereto. In

event of the death or inability to serve of the party named in behalf of the Owner, then the Owner shall select a person in his place; in event of the death or inability to serve of the party named in behalf of the Contractor, then the Contractor shall select a person in his place; in event of the death or inability to serve of the third party, then the remaining arbitrators shall choose a person in his place. Each party hereto shall pay one-half of the expense of such reference.

Art. XIII. The said parties for themselves, their heirs, successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

In presence of

.....

This certifies that, Contractor, under this agreement, dated, 19.... with, to construct a dwelling at.....is entitled to a payment in amount of under the terms of said agreement in accordance with the following statement of the account:

Contract price\$

Extra No. 1, dated

Extra No. 2, dated

Total of contract and extras to date.....\$

Value of work and materials satisfactorily in place at this date\$

Retained percentage, %\$

Certificate No. 1

Certificate No. 2

Total value of work in place on this date.....\$

Total balance unpaid under this contract.....\$

ToOwner. Architect.

Received from, Owner, the sum of
, and I acknowledge that the above
 statement of the account is complete and correct.

....., Contractor.

RECEIPT FOR INSURANCE POLICIES.

(To be detached and delivered to contractor after signing)

Received of, Contractor, fire
 insurance policies as follows:,
 in total amount \$....., issued as required by
 agreement dated, 19..., for the erection
 of a dwelling for me at

....., Owner.

See Text, § 36.

§158. Building and Construction Contract. Building.

Articles of Agreement, made and entered into at
 this
 day of, A. D. 19..., between
 of the of
 County of State of Michigan, part... of
 the first part, and
 of the of, County of
, State of Michigan, part... of the
 second part.

Witnesseth, That said part... of the second part, for and
 in consideration of the sum of
 Dollars to be paid to h... in the manner hereinafter specified,
 do... hereby covenant and agree to erect, build, and complete
 for said part... of the first part, in a good sufficient and work-
 manlike manner
 on or before the day of.....
 A. D. 19..., on certain belong-
 ing to
 situated in the of County of

....., State of, and known as

 of good and sufficient materials, to be furnished by said part....
 of the second part, said work and materials to be in
 accordance with the Plans, Specifications, and Detail Drawings,
 made and furnished by
 Architect..., subject
 to h... supervision and entire approval, the said Supervising
 Architect... to have full power to reject all materials and work-
 manship, not in full accordance with the said Plans, Specifica-
 tions, and Detail Drawings, which it is the intention of the parties
 hereto shall form a part of this contract, as if the same
 were herein written.

.....

 The part... of the first part, for and in consideration of the
 fulfillment by said part... of the second part of the covenants
 and agreements of said part... of the second part, herein con-
 tained, do... hereby covenant and agree to pay or cause to be
 paid to said part... of the second part, the said sum of
 Dollars,
 in the following manner:

.....

 and the balance when the work is completed and accepted by
 the said and if said
 should not be completed on the day above specified, then, in
 such case, said part... of the second part shall pay to said
 part... of the first part, as liquidated damages for non-per-
 formance of contract, the sum of dollars
 for each and every day from and after the day above specified,
 during which said shall remain unfinished and
 not completed and delivered, as aforesaid, and which said part...

of the first part shall have the right to deduct from, and to retain out of, the sum hereinbefore agreed to be paid by said part.... of the first part.

It is hereby covenanted and agreed, by and between the parties hereto, that the said shall be kept fully insured in some responsible Fire Insurance Company or Companies, to cover and protect the interests of both parties hereto as they shall appear, from until the same shall be completed and accepted, as aforesaid, the insurance to be placed and the premiums to be paid by said

It is further agreed, by and between the parties hereto, that said part... of the first part may make, or require to be made, alterations in the plan of construction from that herein, and in said Plans, Specifications and Detail Drawings expressed at any time during the progress of the work, without annulling or invalidating this Agreement, and, in case of such alterations, the increase or diminution of expense occasioned thereby, shall be estimated according to the price fixed by these presents for the whole work and materials, and the cost of such alterations shall be added to or taken from the said price, as the case may be

It is further agreed, by and between the parties hereto, that if there shall be any delay on the part of said part... of the second part, in erecting or completing said that, in the opinion of said Supervising Architect will prevent its being completed on the said day of, A. D. 19..., then said part... of the first part may at option, either employ persons other than the said part... of the second part, to do the whole or any part of said work, and furnish the whole or any part of said materials, and deduct the cost of the same from the sum hereinbefore agreed to be paid by said part... of the first part, or leave the completion of said

..... to said part... of the second part;
.....

All the covenants and agreements herein are declared binding on the parties hereto, and on their respective heirs, representatives and assigns.

It witness whereof, the said parties have hereunto set their hands and seals this day of, A. D. 19....

Signed, Sealed and Delivered in Presence of

..... (Seal)
..... (Seal)

BUILDING SPECIFICATIONS.

SPECIFICATIONS.

Of work to be done and materials to be used and furnished in the erection of for

Situated

General conditions applicable to all bidders for this work:

First. The Specifications and drawings are intended to co-operate so that any works exhibited in the Drawings and not mentioned in the Specifications, or (*vice versa*), are to be executed the same as if they were mentioned in the Specifications and set forth in the Drawings, to the true spirit and meaning of the Specifications and Drawings, without any extra charge whatsoever.

Second. The Contractors, at their own cost and charges, are to provide all manner of material of every kind necessary to complete the finishing of all the buildings, with labor, scaffolding, implements, moulds, models, centering and cartage, and all else of every description used or required in the building.

Third. Should the Proprietor or Superintending Architects at any time during the progress of the work of the said buildings, require any alteration, deviations, additions or omissions from the contract, they shall be at liberty to do so, and the same

shall in no way affect or make void the contract, but will be added to or deducted from, the contract price, as the case may be, at a fair and reasonable valuation.

Fourth. Should the Contractor at any time during the progress of the work refuse or neglect to supply a sufficiency of materials and workmen, the owner shall have the power to provide material and workmen after three days' notice in writing being given to furnish the said material and workmen, and in case of non-compliance, the expense shall be deducted from the amount of the contract, and the back percentage forfeited, and if necessary, the work re-let.

Fifth. Should any doubt or dispute arise respecting the true construction or meaning of the Drawings and Specifications, the same shall be decided by the Superintending Architects, and their decision shall be final and conclusive; but should any dispute arise respecting the true value of any extra work or works, the same shall be paid in accordance with the schedule of prices of the various works which are to be attached to each bid, the quantities of such extra work to be supplied by the Architects.

Each bidder will be required to furnish a schedule of prices of the different kinds of work included in his bid.

The bidding will be in a lump sum for each class of work as follows, viz:

The Mason's bid to include all excavations of cellars, areas, etc., stone masonry, cut stone, brickwork, etc., all stuccoing and lining, and to assist in setting all the iron columns, type bars, etc., built-in iron anchors, galvanized iron bond timbers, etc.

The Carpenter's bid to include all carpenter's and joiner's work necessary to make a complete building, to furnish and properly secure all iron anchors, gravel roofing, and all tin work, furnish and set all bond timbers, plates, etc.

The Painter's bid to include all painting, glazing and skylights, and all other work necessary to complete the painting and glazing.

Plumber's bid to include all water supply, water closets, gas

pipes, and connections with drains, and everything necessary to make all complete in this department.

Galvanized iron bid to include all galvanized iron, and anchors necessary to secure the same.

Iron work bid to include all iron columns, iron tye bars, area grating and window guards, and assist in setting the same.

The Plasterer's bid to include all lathing and plastering, and all material necessary to complete the same.

The Owner shall not in any way be accountable for any loss or damage that shall or may happen to said works or any part thereof respectively, or for any materials or other things used and employed in finishing and completing the same.

It must be understood that the method of measuring the masonry and brickwork is to be the solid contents of the wall and piers only, with an allowance of half the openings. Corners will be measured only one way. 22 bricks will be allowed for the cubic foot, and $16\frac{1}{2}$ feet to the perch of masonry.

The building is shaped as shown on Drawings on which the dimensions and measurements are figured (which are to be used in all cases in preference to measurements by scale) and for full explanation of the sizes, interior divisions, height of stories, and other arrangements, reference must be had to the elevations, sections, and the plans of basement and several floors, together with after enlargements, etc., which Plans and Drawings form part of these specifications.

The excavations for the cellars and foundations will be taken out of the size and depth shown on drawings, and when finished will be feet high in the clear between the finished floor and the bottom of the joists of the first floor, making a total depth of excavation under the first or store floor joists of feet inches. The excavation for the foundation or footings of walls, exterior and interior, will be as shown, on sections where the foundation is good and solid, but should there be any soft places or pockets, they will have to be dug out and the walls carried up from a good and sound foundation, and the excavation will be done accordingly to the proper depths,

the bottom of the cellars to be left clear and level. Mason to furnish sand in cellar to bed sleepers, for cellar floor.

The footing courses and foundation walls will be of the size and depth shown on Drawing. The stone used for the walls and footing courses to be of the best quality of building stone. Those placed in the footings are to be large and flat, solidly bedded in good cement mortar, made with Akron water-lime one part to one part of good stone lime and three parts of good, sharp and clean coarse sand; about two inches deep of this to be laid under the footings, and stones to be well bedded therein, and the footings of all walls built with this cement mortar. The remainder of the stone walls will be laid up with the best quality of building stone and mortar made of the stone lime and clean, sharp sand, one to four parts, well mixed; the stones are to be laid in regular courses, to have through bonding stones, and all the joints and interstices well filled with mortar; all the stonework showing above the grade line to be chisel dressed, coursed, and pointed with mortar same color as stone, and lined with black line, level and plumb; all walls are to be laid by and full to the line on both sides, all walls to be neatly pointed in the inside; walls and piers to be perfectly plumb; area walls to be built of same quality of stone and mortar, and are all to be paved with brick set on edge, laid in cement mortar; all the interior walls of the cellars to be built of brick; the stone work on cellar plan is colored neutral tint, and brickwork red.

The side drains on the foundation plan are indicated by colored red line and the sewer pipe is shown by blue lines; the tile drains will extend all round the footings as shown on plan. It is to be carefully laid with broken brick around each joint, with a regular and even fall to the back of the and to be connected with the sewer pipe where marked; each of the areas are to be connected with the tile drains; the sewer pipe used to be of the best quality of Ohio stoneware; joints to be thoroughly filled with pure cement mixed with water; the main drains to be connected with sewer and laid up into the cellars with a gradual

rise; before being laid, the bottoms of the trenches are to be leveled off and pounded down; after being laid, the earth to be thrown around and pounded down; stench traps with hand holes are to be placed where marked; the sewer pipes to connect with the conductors are to be brought six inches above ground and opening around conductor pipes cemented; elbows and connections where needed to connect with soil and waste pipes are to be placed in accordance to directions of the Superintending Architects; the whole of the work to be done in a complete and workmanlike manner.

The brickwork will be carried up both interior and exterior, as shown on Drawings from the foundation walls, the front to be faced with stock brick of a uniform color; to be rubbed, pointed, stained and lined with black line, level and plumb; the remainder of the brick are to be of the very best common brick, sound and well burnt (no soft or imperfect brick allowed); the best brick both in color and hardness to be used for the outside of the walls; they are to be laid with the American bond, which is three stretching courses, and the fourth and fifth headers in all the work over eight inches thick; eight-inch walls to have every fourth course headers; the joints not to be more than three-eighths of an inch in thickness; they are to be flushed full at each and every course, and all joints and interstices well and thoroughly filled with thin mortar; if the weather be dry and warm, the bricks to be well wet, but in no case are they to be wet in frosty weather.

The walls are to be laid straight to the line, interior and exterior, and perfectly plumb; all arches are to be carefully turned, the joints on the intrados not to exceed $\frac{3}{32}$ of an inch, or as close as they can be worked; arches are to be turned over all openings.

The outside of all walls on side and rear to be neatly pointed.

The mortar for the brickwork to be composed of good, clean, sharp sand, and the best stone lime well burnt, in the proportion of 1 to 3 of sand; the lime to be well slacked and thoroughly

mixed with the sand, pilasters, corners and projections to be clear and sharply worked, and every way plumb; the cut-stone work, water-table, string courses, door steps, window sills, skew backs and bearing stones for columns and all other cut-stone work to be well laid and properly bedded, and built in at their proper level; the window sills and door steps being left slack in the center and afterwards pointed up when the settlement takes place.

All the flues will be built according to the Drawings, or as may hereafter be directed during the progress of the work; they are to be all smoothly plastered on the inside and the chimneys to be carried above the roof as shown on Drawings and topped with smooth, hard brick, laid in cement.

Iron thimbles are to be placed in all flues and partitions where directed; thimbles and partitions to be built in with plaster of Paris and brick to protect woodwork from fire; each flue to have soot drawer in cellar or where directed; all stove-pipe holes in flues to have good tin stoppers.

The Bricklayer will build in the necessary bond timbers, bricks, plates and anchor bonds, and all other timber work necessary for the carpenter work (the carpenter will supply the necessary iron anchors as hereinafter described); the Bricklayer and Mason will assist the Contractor for the iron work setting all the columns, and all other iron work in connection with the masonry and bricklaying.

The whole of the mason and brick work to be done and finished in a complete and workmanlike manner to the entire satisfaction of the Superintending Architect, who will have full power to reject any and all material and workmanship not in accordance with the Drawings and Specifications.

§158a. Building and Construction Contract. Building.

Articles of Agreement. It is hereby mutually agreed, this day of, 19..., by and between

..... part... of the first part, and
part... of the second part, all of County, State
of, as follows, to-wit:

Part... of the second part, for heirs, executors
and administrators, hereby covenant... and agree... to and with
said part... that will erect, construct and fully complete
in a good, substantial and workmanlike manner, on or before
the day of, 19..., for the con-
sideration hereinafter named, the following described improve-
ments upon the real estate described in the specifications hereto
attached, to-wit:

..... in the manner, in all respects, set forth in the
plans and specifications hereunto attached and made a part; that
second party shall furnish, at his own expense, all the labor and
material used in such erection, construction and completion of
said improvements, and will carry a builder's insurance risk on
same while in progress; in consideration for all which the party
of the first part hereby agrees to pay unto second party the sum
of dollars, in the manner following, to-wit:

.....
..... Provided, that second
part... shall have fully paid for all material and labor furnished
to date of payment, so that there shall not be a lien therefor on
the said real estate; that second party shall execute a bond in
the sum of dollars, with sureties to
the satisfaction of first party and.....mortgagee,
conditioned to indemnify first party and.....mortgagee
from loss by reason of mechanics' liens.

It is further mutually agreed by and between the parties hereto,
that the said plans and specifications shall co-operate; that is to
say, that any work or works set forth in the plans, and not men-
tioned in the specifications, and (*vice versa*) are to be executed
as fully as though set forth in both the plans and specifications.

That nothing shall be built, erected, charged and paid for as
extras, until after all agreements in relation thereto have been

first reduced to writing and signed by the parties hereto; that first party shall not be liable for any damage that shall occur to any part of said work and improvements and to any person or persons employed in or about said premises; that second part... shall pay unto the first part... the sum of dollars per day for each day the completion of said improvements shall be delayed beyond the date hereinbefore fixed for their completion; that first part... shall have the right to control the location of closets, mantels, shelves, brackets, chandeliers, bracket lights, stove pipe holes in flues, and colors of paint, beyond those mentioned in the specifications; and that first part... shall not be responsible for any material and labor used in the improvements aforesaid.

In witness whereof, the parties have hereunto set their hands on the day and date hereinbefore written.

.....First party.

.....Second party.

See Text, § 35.

FORM OF BUILDING SPECIFICATIONS.

Specifications for improvements. Specifications for improvements on the following described real estate, situated in County, State of

EXCAVATION. a. Outside trenches inches deep. b. Cellar by feet in size, and feet deep in the clear.

FOUNDATION. a. Quality of brick, inches in ground and inches above ground, inches thick; outside walls of cellar to be nine inches thick, and inside walls to be four inches thick. b. The studding shall rest upon timbers placed upon foundation of dimensions and constructed as follows: and of following dimensions:

JOISTS. a. Quality, and kind of timber b. Dimensions of joist shall be by inches.

placed inches from center to center, with rows of truss bridging, and joists shall be accurately sized at the top. c. Second story joists shall be by inches, placed inches from center to center, with rows of truss bridging, and accurately sized both at top and bottom. d. Joists shall be spiked with penny nails, and bridging nailed securely with penny nails. e. Studding shall be double at all corners and all openings.

STUDDING. a. Quality and dimensions of studding. b. How fastened at top. c. Kind of nails and how many used in spiking studding. d. How far from center to center.

RAFTERS. a. Quality and dimensions of rafters. b. Rafters shall be placed inches from center to center. c. Pitch shall be d. Rafters shall project inches outside of outer walls, and shall be finished as follows:

LINING. a. Paper of quality, and fastened as follows: b. Timber as follows and put on diagonally in following manner, with penny nails in each studding.

WEATHERBOARDING. a. Quality and kind of weatherboarding shall be and securely nailed to each studding with one penny nail; free from wind-shakes, bad knots and placed inches to the weather. b. Corner boards shall be of lumber by inches. c. The finish around the doors and windows shall be as follows:

PORTICOES. a. Shall be built, having turned columns resting upon iron stands, piers by inches; feet wide, and with roof, necessary brackets and scroll work, shall be built as follows:

ROOF. a. Sheathing shall be inches apart, nailed with penny nails in each rafter, and shall be of lumber described as follows: b. Shingles of quality, placed

..... inches to weather, and nailed with two penny nails to each shingle. c. Comb boards of following kind and quality:

FLOORS. a. Kind and quality of flooring shall be as follows: and each plank shall be nailed to each joist with penny nails.

WINDOWS. a. Frames shall be of following description: b. Sash of following description will be used. c. Glass shall be of double strength and of following dimensions fastened with tin points and well puttied. d. Weights, cords, pullies and locks will be put on all windows, except

DOORS. a. outside doors, of style and of following size and description b. inside doors of panels and of following size and description will be used. c. Transoms of following size, and hung on pivots, will be used over each door (except closet doors). d. Hardware for doors will be of following kind and sizes. e. Bumpers will be provided for each door.

PLASTERING. a. Lath of quality shall be used. b. coats of brown mortar, made of lime, best hair and sharp sand, shall be put on with true surface and corners. c. One skim coat of white shall be put on the brown coat (when dry), with like accuracy of surface and corners.

FINISH. a. Kind and quality of lumber for inside finish shall be as follows: b. Style of finish shall be c. Baseboard shall be by inches, with moulding on top and quarter round on floor. d. Finishing shall be by inches round each door and windows, with moulding as follows: e. Picture moulding shall be put in the following rooms:

CLOSETS. a. Where placed and dimensions. b. Doors of following kinds shall be used for each closet, to-wit: c. Shelves shall be placed in each closet as follows..... d. Closet hooks of best quality shall be placed in each closet.

PANTRY. a. Shelving. b. Bread box of following construction shall be provided. c. Other furnishings for pantry shall be as follows:

STAIRWAYS. a. Location and kind of finish. b. Banisters shall be. c. Newel posts shall be. d. Landings. e. Manner of construction shall be. f. Stairway for cellar shall be constructed as follows:

PLUMBING. Shall be put in as follows, and of best material and workmanship:

TINWORK. Shall be as follows and of best quality of tin for long wear:

PAINT. a. coats of best boiled linseed oil, and best brands of lead, of color to suit owner, for outside. b. coats of for all inside finish, after finish has been thoroughly sandpapered, except. c. Roof, tinwork and comb boards shall be painted with two coats of paint.

FLUE. a. Shall be located as follows: b. Brick shall be of best hard burned where exposed to the weather, with foundation thereof resting on ground, starting inches below surface, well plastered on the inside, and provided with holes for stove pipe and best sheet iron thimbles and tin caps wherever directed by owner; all flues and chimneys to extend feet above roof, and well supplied with tin flashings, to prevent leaks where they pierce the roof.

VENTILATORS. Shall be made of ornamental scroll work by inches in size and placed as follows:

ORNAMENTAL scroll work shall be placed as follows and of following description:

OUTSIDE steps at each outside door shall be constructed as follows:

FENCING. a. Picket. b. Tight boards. c. Paint.

WELL. a. Kind. b. Furnishings

CISTERN a. Size. b. Furnishings. c. Connection with down spout. d. Overflow pipe.

SINK. a. Kind. b. Covering.

OUTBUILDINGS. a. Kind. b. Kind and quality of material to be used therein. c. Size. d. Foundation. e. Roof. f. Paint. g. Vault shall be feet deep, and walled with whole brick, burned sufficiently hard not to crumble. Its location shall be

EXTRAS.

PLANS for buildings for which the foregoing specifications are made are as follows:

§159. Building and Construction Contract. Theatre Building

(Teakle v. Moore, 131 Mich. 428.)

"This agreement made the day of in the year A. D. 19..., by and between of the city of, County of, and State of, parties of the first part (hereinafter designated the 'contractors'), and, of the city of, County of, and State of, party of the second part (hereinafter designated the 'owner').

"The contractors shall and will well and sufficiently perform and finish, under the direction and to the satisfaction of, architect, (acting as agents of said owner), all the work included in the carpenter and joiner work and hardware of a theater building to be erected on the north side of, between, in the city of, County of, and state of, agreeably to the drawings and specifica-

tions made by said architects (copies of which have been delivered to the contractors), and to the dimensions and exceptions thereon, therein and herein contained, according to the true intent and meaning of said drawings and specifications and of these presents, including all labor and materials incident thereto, and shall provide all scaffolding, implements, and cartage necessary for the due performance of the said work.

“Should it appear that the work hereby agreed upon and intended to be done, or any of the matters relative thereto, are not sufficiently detailed or explained on the said drawings or in the said specifications, the contractors shall apply to the architects for such further drawings or explanations as may be necessary, and shall conform to the same as part of this contract, as far as they may be consistent with the original drawings; and, in event of any doubt or question arising respecting the true meaning of the drawings or specifications, reference shall be made to the architects, whose decision thereon shall be final and conclusive. It is mutually understood and agreed that all drawings, plans and specifications are and shall remain the property of the architects.

“Should any alterations be required in the work shown or described by the drawings or specifications, a fair and reasonable valuation of the work added or omitted shall be made by the architects, and the sum herein agreed to be paid for the work according to the original specifications shall be increased or diminished, as the case may be.

“The contractors shall and will proceed with the said work, and every part and detail thereof, in a prompt and diligent manner, and shall and will wholly finish the said work according to the said drawings and specifications, and this contract, on or before the day of, in the year, and, in default thereof, the contractors shall pay to the owner dollars for every day thereafter that the said work shall remain unfinished, as and for liquidated damages.

"Should the contractors be obstructed or delayed in the prosecution or completion of the work by the neglect, delay, or default of any other contractor, or by any alteration that may be required in the said work, or by any damage which may happen thereto by fire, or by the unusual action of the elements, or by the abandonment of the work by the employees through no default of the contractors, then there shall be an allowance of additional time beyond the date set for the completion of said work.

"The contractors shall make no claim for additional work unless the same shall be done in pursuance of an order from the architects, and notice of all claims shall be made to the architects in writing within ten days of the beginning of such work.

"And it is hereby mutually agreed between the parties hereto that the sum to be paid by the owner to the contractors for said work and materials shall be and (.....) dollars, subject to additions or deductions on account of alterations as hereinbefore provided, and that such sum shall be paid in current funds by the owner to the contractors in installments as follows: From time to time as the work progresses, reserving per cent.; it being understood that the final payment shall be made within (....) days after this contract is completely finished: Provided, that in each of the said cases the architects shall certify in writing that all the work upon the performance of which the payment is to become due has been done to their satisfaction.

"And the said owner hereby promises and agrees with the said contractors to employ, and does hereby employ, them to provide the materials and to do the said work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions above set forth."

One of the conditions attached to the general specifications reads:

"The owner and architects shall have full power to make any

alterations during the progress of the work which they may deem necessary or advisable, and such alterations shall not affect or make void the contract.

"No claim for extra work shall be considered unless the price for the same shall have been agreed upon in writing between the owner and architects prior to the commencement of the same. In the case of work being omitted, a deduction shall be made from the amount of the contract at the same rate as provided in the contract for similar work."

See Text, § 35.

§160. Building and Construction Contract. Railroad.

(Hendrie v. Canadian Bank of Commerce, 49 Mich. 402.)

Articles of agreement, made and concluded this day of, A. D., between of the first part, and of, of the second part, witnesseth: That for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by the said party of the second part, the said party of the first part doth hereby covenant and agree to construct and finish, in the most substantial and workmanlike manner, to the satisfaction and acceptance of the chief engineer of the, & Railroad Extension, all the gradation and such other work as may be required on sections 1 and 2 of said road; the said work to be begun, carried out, and finished as described in the specifications and general provisions following hereto, and agreeably to the directions, from time to time, of the said chief engineer, or his assistants, on or before the day of, in the year, time being declared to be material and of the essence of this contract.

It is further agreed and understood that the work embraced in this contract shall be commenced within days from this date and prosecuted with such force as the said chief engi-

neer shall deem adequate to its completion within the time specified; and if at any time the said party of the first part shall, upon receiving written notice from said chief engineer, refuse or neglect to prosecute the work with a force sufficient in the opinion of the said chief engineer for its completion within the time specified in this agreement, then and in that case the engineer in charge, or such other agent as the said chief engineer may designate, may proceed to employ such a number of workmen, laborers, and overseers as may, in the opinion of the said chief engineer, be necessary to insure the completion of the work within the time hereinbefore limited, at such wages as he may find it necessary or expedient to give; pay all persons so employed and charge over the amount so paid to the party of the first part as for so much money paid to said party of the first part on this contract; (or the said chief engineer may at his discretion, for the failure to prosecute the work with an adequate force, for non-compliance with his directions in regard to the manner of constructing it, or for any other omission or neglect of the requirements of his agreement and specifications on the part of the party of the first part, declare this contract, or any portion or sections embraced in it, forfeited); which declaration and forfeiture shall exonerate the said party of the second part from any and all obligations and liabilities arising under this contract, the same as if this agreement had never been made; (and the said party of the first part shall give up possession of the work to the party of the second part within hours after he shall have been notified in writing that the contract has been forfeited); and the reserved percentage of per cent. upon any work done by the party of the first part may be retained by the said party of the second part until the full performance of the work, and the complete settlement and adjustment of all matters arising thereunder; and in case of any default or defaults by the said party of the first part in any of the previous covenants or stipulations in said contract on his part made and entered into, for which the party of the second

part shall be entitled to claim damages, such reserved percentage, or so much thereof as shall be necessary, shall be applied upon and towards the payment of such damages when the amount thereof shall be ascertained and determined. And it is mutually agreed and distinctly understood that the decision of the said chief engineer, for the time being, of the said,, Railroad Extension, shall be final and conclusive in any dispute which may arise between the parties to this agreement, relative to or touching the same; and each and every one of said parties do hereby waive any right of action, suit or suits, or other remedy in law or otherwise, by virtue of said covenants, so that the decision of the said chief engineer shall, in the nature of an award, be final and conclusive on the rights and claims of said parties.

Contractor—Sir: I beg to notify you that, as you have failed to prosecute the work under your contract with me, on sections 1 and 2 of, with a force and diligence sufficient for its completion of coming, I will take charge of your work on morning, under said contract, and proceed to employ such a number of workmen, laborers, and overseers to do whatsoever else may be necessary to ensure the completion of the work within the time hereinbefore specified; and all wages, therefore, paid to persons thus employed for said purpose, I will charge over to you for your account, an accounting for the same between you and me to be had hereafter, according to the provisions of said contract.

Mr. will represent me, and take charge of the said work, as above mentioned, in my behalf.

Yours,

.

See Text, §35.

§161. Building and Construction Contract. Railroad.

(Grand Rapids & Bay City R. R. Co. v. Van Deusen, 29 Mich. 432.)

"This agreement, made this day of,

A. D., by and between the
 and party of the first part, and
 and, both of
, parties of the second part, witnesseth,
 that whereas, the said first party proposes to construct a rail-
 road, to be known as the and
 Railroad, and have surveyed and located that part of the eastern
 division thereof commencing at station one hundred and two
 and extending to and beyond station eight hundred and two,
 and has agreed to let certain portions of said work to said second
 parties as is hereinafter specified. It is therefore agreed between
 said parties as follows: Said parties of the second part agree
 to proceed with such diligence, and with such force of laborers,
 as the executive committee of said company (party of the first
 part) may direct, to perform the work herein specified, and to
 complete the same according to the specifications as furnished
 by the engineer of said railroad company, and to the full satisfac-
 tion and acceptance of said engineer and the executive committee
 on or before the day of, 19..., and the
 said specifications which are hereto attached shall be held and
 considered as part of this contract.

"The work to be done and materials to be furnished by said
 parties of the second part under this contract are the following,
 viz: chopping, clearing, grubbing, building of culverts, cattle-
 guards, and bridges, and earth excavations, which work the said
 second parties agree to do in such manner as to prepare the
 roadbed for the ties, to the acceptance and satisfaction of the
 said engineer and executive committee, as aforesaid, from sta-
 tion one hundred and two to station eight hundred two afore-
 said, for the price hereinafter specified; said parties of the first
 part agree to pay for said work and materials the following
 prices, viz:

"First. For grubbing (to be measured in like manner), not in
 timber land, allowance to be made by engineer.

"Third. For grading, per cubic yard.

"Fourth. For bridges,

"Fifth. For culverts and cattle-guards

"Between the first and tenth of each month estimates of work done the preceding month shall be made by the engineer of said company, and on the of each payment shall be made to the amount of per cent. of such estimate; the per cent. shall be retained until the work shall be fully completed and accepted by said engineer and executive committee, and in case said parties of the second part shall fail to perform this contract, the said per cent. shall be retained as liquidated and settled damages for the breach of this contract.

"It is further agreed that all questions that may arise between the parties hereto under this contract, shall be referred to said engineer for adjustment, and his award shall be final and conclusively binding on both parties. Said parties of the second part further agree to give bond to said first parties with good and sufficient sureties, to be approved by the executive committee of said railroad company, in the sum of dollars, conditioned for the faithful, prompt and proper performance of this contract, and that they will save the said first party harmless from all liability for the labor done and materials and supplies furnished for said work by the employes and others contracting with said second parties beyond the amount that may be due from said first party to said second party, and to this end, and for a further security to said first party, it is agreed that the provisions of act No. of the session laws of shall be taken to be a part of this contract. It is further agreed that no spirituous or intoxicating liquors shall be furnished by said second parties to, nor allowed to be used by the laborers on the line of the road. In case of any change of location of the line of said road, this contract shall apply to the line as changed, and no damages shall be claimed by said second parties by reason of such change.

"It is further agreed that when the line of said road shall be

located and surveyed eastward from station one hundred and two toward or to the river, said second parties shall have the option to prepare the same for the ties, under the provisions of this contract, and in such case this contract and the bond given in pursuance thereof shall be held to apply to said portion east of station one hundred and two, as well as to that west thereof, in the same manner and to the same effect as if the same were now absolutely embraced herein.

"It is further agreed that the work shall be done on such parts of the line as the engineer may direct, and it is further agreed that the work shall be staked and prepared by the engineer at such time and in such manner as not to delay the second parties in the prosecution of their work."

In witness whereof, the parties hereto have hereunto set their hands and seal the day and year first above written.

See Text, 835.

§162. Building and Construction Contract. Railroad.

(Mann v. Pere Marquette R. Co., 135 Mich. 212.)

"Agreement, made this....day of....., A. D. 19...., between, both of,, and doing business under the name of, hereinafter for convenience called the first party, and the, hereinafter called the second party.

"The first party hereby requests the second party to construct two side tracks, to be located at,, No. 1 connecting with the South Horn track about 200 feet east of location stake 45, and extending westerly about 500 feet; No. 2, connecting with the Brewery siding about 300 feet west of location stake 30, extending easterly 300 feet, for the convenience of the first party in receiving and shipping freight. In consideration of the representations, promises, and undertakings of the first party, and upon the conditions and takings of the first party, and upon the conditions and with the

reservations hereinafter stated, the second party hereby agrees to comply with such request as soon as practicable after the execution of this agreement.

"Wherefore, this writing witnesseth:

"1. Said side tracks shall be constructed substantially according to the plan hereto attached, six hundred and eighty feet, or thereabouts thereof being upon land owned or controlled by the first party, and two hundred feet, or thereabouts, upon land owned or controlled by the second party. The first party hereby represent that they have lawful authority to permit the second party to construct and use said side track, according to said plan and the terms of this agreement, beyond the line indicated on said plan as the limit to the second party's premises; and the first party hereby grants to the second party the right to construct and use said side tracks in accordance with the terms hereof, and hereby agrees to indemnify and save the second party harmless of and from all damages, costs, and expenses that may be suffered or incurred by it on account of any claim of trespass or other claim by any third party or parties arising from the construction or use of said side track.

"2. The material for the construction of said side track shall be furnished as follows: By the second party. The said side tracks, including ties, rails, switches, and crossing material, if any, shall be and remain the property of the second party, and under its exclusive control, except as herein otherwise stated. And the second party shall have the right to use the whole or any part of said tracks for other business than that of the first party, when it will not interfere with the first party's business, without any allowance therefor to the first party, and without restriction except as herein stated.

"3. The principal inducement for the construction of said side tracks by the second party is to secure as much as possible of the freight to be shipped to or from the first party in connection with the business carried on by the first party along or near said proposed side tracks, and, in consideration of the

agreement of the second party, herein contained, the first party hereby agrees that, from the date hereof, all freight shipped by the first party in connection with said business (and all freight shipped to them, so far as they control the shipment thereof), shall be shipped over the railroad of the second party, whenever it, either alone or in connection with other lines, shall be willing to carry the same at rates equally favorable with those actually offered by another carrier. And the first party shall, at all times during the continuance of this agreement, give the second party opportunity to meet the rates of a competitor before shipping any such freight by another carrier. The first party further agrees that all freight, the destination or place of shipment of which shall be off the lines operated by the second party, shall, so far as the first party may be able to control the same, be so routed as to give the second party the benefit of the longest possible haul over lines owned or operated by the second party. It is agreed that, if at any time the first party shall fail to observe the true intent and meaning of this paragraph, the second party shall have the right, after fifteen days' notice to the first party, to terminate this agreement, and to enter upon the lands referred to, and remove said side track and all its connections.

"4. The first party recognizes that the use of said side track involves risk of loss by fire originating from the second party's engines. As a further inducement and consideration for the construction of said side track, the first party hereby assumes all such risk of fire, and releases the second party from all liability, statutory or otherwise, for any loss or injury by fire sustained in respect to buildings owned by the first party, or personal property belonging to or in charge of the first party, now situated or hereafter placed in the vicinity of said side track, whether such loss or injury be due to negligence of the second party or its employes, or to other causes; and the first party further agrees to keep the grounds adjacent to said side track, on each side, reasonably free and clear of inflammable and combustible material, so as to prevent the starting of fire, by means

thereof, to the property of the second party and others, as well as to the property of the first party; and the first party hereby assumes all duty concerning the condition of said grounds, and releases the second party from all liability, statutory or otherwise, on account of fires that may be due, in whole or in part, to the condition of said grounds. The first party further agrees that, before or at the time of procuring fire insurance on any of their buildings or personal property now or hereafter situated in the vicinity of said side track, they will distinctly give notice to each and every insurance company about to issue a policy to the first party on such buildings or personal property, of the substance and purport of this agreement, so that each interested insurance company shall know that it will acquire no right, by subrogation or otherwise, to recover of the second party for any loss by fire; and the first party agrees to indemnify the second party from all damage, costs, and expenses on account of claims that may be made against the second party by any insurance company on account of the burning of any buildings or personal property located in the vicinity of said side track.

"5. The first party agrees that they will not erect, or permit to be erected, any structure, temporary or otherwise, over or above said track, at a lower level than twenty-two feet above the track rails, nor nearer to the sides of the rails than six feet, without first obtaining the written consent of the second party; and, as a further inducement and consideration for the construction of said side tracks, the first party assumes all risk of injury to any building or structure, and the contents thereof, now or hereafter situated in the vicinity of said side tracks, caused by an engine or car coming in contact with said building or structure, whether due to negligence of the second party's employes or to other causes; and the second party is hereby released from all liability therefor.

"6. Said side tracks shall be maintained by the second party, and the costs of such maintenance shall be borne by the second party.

"7. In case the first party shall fail in the performance of any of the agreements on their part herein contained, the second party shall have the right, at once and without notice, to terminate this agreement; and it may at its option, after sixty days' notice in writing to the first party, elect the right to enter upon the property of the first party and remove said track and connections; but the second party, its successors and assigns, shall have the right to maintain and use said track, pursuant to this agreement, so long as the business reached thereby shall be conducted in the vicinity thereof; and the first party shall not grant or attempt to grant to any party any right to use the same at any time.

"8. The successors and assigns of the second party shall succeed to all the rights and privileges accorded by this agreement to the second party, and shall be entitled to enforce the agreements of the first party herein contained; and any assignment by the first party of his rights under this agreement shall be subject to the written consent of the general manager of the second party, and be void unless given with such consent."

See Text, §35.

§163. Building and Construction Contract. Railroad.

This agreement made and executed this day of, A. D., 19.. by and between, of the first part, and of the second part, witnesseth, that for and in consideration of the stipulations, agreements, covenants and payments hereinafter mentioned to be made and performed, by the said party of the second part, the said party of the first part doth hereby covenant and agree to complete in the most workmanlike manner, to the satisfaction and acceptance of the engineer of said company of the second part. All the bridges, buildings, as well as all the grading, and masonry, necessary for the full completion of said work and more specifically set forth in the specifications hereto attached.

And the said party of the second part does promise and agree to pay to the said party of the first part, for all the work to be performed under this contract, as follows: earth excavation per cubic yard .. cents, rock excavations per cubic yard .. cents, bridge masonry per cubic yard .. dollars.

On or about the last day of each month during the progress of this work, an estimate shall be made of the relative value of the work done, to be judged by the engineer, and percent of the amount of said estimate shall be paid to the party of the first part, on or about the day of the following month. And when all the work embraced in this contract is completed, agreeably to the specifications and in accordance with the instructions and to the satisfaction and acceptance of the engineer, there shall be a final estimate made of the quality, character, and value of said work, according to the terms of this agreement, when the balance appearing due, to the said party of the first part, be paid to him within days thereafter, upon his giving a release, under seal to the party of the second part, from all claims or demand of whatsoever nature growing in any manner out of this agreement, and upon his procuring and delivering to the parties of the second part full release in proper form and duly certified from mechanic and material men, of all liens, claims and demands for material furnished and provided, and work and labor done and performed upon or about the work herein contracted for under this contract.

It is further covenanted and agreed between the said parties, that the said party of the first part shall not transfer this contract, nor any part thereof, to any person, without the written consent of the engineer, but will at all times give personal attention and superintendence to the work.

It is further agreed and understood that the work embraced in this contract shall be commenced within days from this date, prosecuted with such force as the engineer shall deem adequate to its completion within the time specified; and if at any time the said party of the first part shall refuse or

neglect to prosecute the work with a force sufficient, in the opinion of the said engineer, for its completion within the time specified in this agreement, then, and in that case the said engineer in charge, or such other agent as the engineer shall designate, may employ such a number of workmen, laborers and overseers as may, in the opinion of the said engineer, be necessary to insure the completion of the work within the time heretofore specified, at such wages as he may find it necessary or expedient to give, pay all persons who are employed and charge over the amount so paid to the party of the first part as for so much money paid to him on this contract; or for the failure to prosecute the work with adequate force, for non-compliance with his instructions in regard to the manner of constructing it, or for any other omission or any neglect of the requirements of this agreement and specifications on the part of the party of the first part, the said engineer may, at his discretion, declare this contract or any portion or section embraced in it forfeited, which declaration or forfeiture shall exonerate the said company from any and all liabilities arising under this contract the same as if this agreement had never been made; and the reserve percentage of per cent upon any work done by the party of the first part may be retained forever by the said company.

And the said party of the first part has further covenanted and declared to take, use, provide, and make all proper necessary precautions and sufficient safe-guards and protection against the occurrence or happening of any accidents, injuries, damages or hurt to any persons or property during the progress of the construction of the work hereafter contracted for, and to be responsible for, and to indemnify and save harmless the said party of the second part, and the said engineer, from the payment of all sums of money by reason of all or any such accidents, injuries, damages or hurt, which may occur upon or about said work, and from all fines, penalties and loss incurred for or by reason of the violation of any city or municipal ordinance or

regulations or law of the state, while the said work is in progress of construction.

In witness whereof, the parties herein named have hereunto set their hands and seals, date and year herein as above named.

See Text, §35.

§164. Building and Construction Contract. Clauses.

(Cresswell v. Robertson, 139 Mich. 420.)

"3rd. Should any alteration be required in the work shown or described by the drawings or specifications, the quantities for such alterations either as additions to or deductions from the work, shall be made by the architects, and the prices for same shall be in accordance with the prices named in the proposal submitted by those contractors. Said proposal is attached to this contract.

"4th. The contractors shall, within twenty-four (24) hours after receiving written notice from the architects to that effect, proceed to remove from the grounds all materials condemned by them, whether worked or unworked, or take down all portions of the work which the architects shall condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and to the conditions of this contract: The contractors shall permit the owners and architects to visit and inspect the said work or any part thereof, at all times and places during the progress of the same, and shall provide sufficient, safe and proper facilities for such inspection.

"6th. Should the contractors be obstructed or delayed in the prosecution of the work by the neglect, delay, or default of any other contractors, or by an alteration that may be required in the said work, or by any damage which may happen thereto by fire, or by the unusual action of the elements, or by the abandonment of the work by the employes through no fault of the contractors, then there shall be an allowance of additional time beyond date set for the completion of said work; but no such allowance shall be made unless the claim is presented in writing at the time of such obstruction or delay. The architects shall

award and certify the amount of additional time to be allowed, in which case the contractors shall be released from the payment of the stipulated damages for the additional time so certified and no more.

"8th. The contractors shall make no claim for additional work, unless the same shall be done in pursuance of an order from the parties of the second part, and notice of all claims shall be made to the parties of the second part, in writing, within ten (10) days of the beginning of such work.

"10th. The contractors shall cover, protect, and secure the work from injury, any damage happening thereto shall be repaired, replaced, or made good by said contractors. The contractors shall be responsible for any harm or injury which may happen to any person or persons on or about the buildings by reason of any act or default of said contractors, their subcontractors, employes or agents. The contractors shall pay to the parties of the second part all costs which the said parties of the second part may incur by reason of said harm or injury.

"14th. It is mutually further agreed by the parties hereto; that the inspection of any work by the architects or the issuance of certificate thereon by them, or payments made by the parties of the second part, under this contract, shall not release the contractors from any obligation to perform the work in a good and workmanlike manner, and in case of any defect or defects being found at any time, either in workmanship or materials, the same, with all damages due thereto, shall be repaired, replaced, or made good by the contractors at their own cost and expense.

See Text, § 35.

§165. Building and Construction Contract. Clauses.

(Weggner v. Greenstine, 114 Mich. 310.)

"The contractor, under the direction and to the satisfaction of, architect, acting, for the purposes of this contract, as agent of the said owner, shall and will provide all

the materials," etc. "No alterations shall be made in the work shown or described by the drawings and specifications, except upon a written order of the architect; and, when so made, the value of the work added or omitted shall be computed by the architect, and the amount so ascertained shall be added to or deducted from the contract price. In the case of dissent from such award by either party hereto, the valuation of the work added or omitted shall be referred to three disinterested arbitrators, one to be appointed by each of the parties to this contract, and the third by the two thus chosen, the decision of any two of whom shall be final and binding; and each of the parties hereto shall pay one-half of the expenses of such reference."

"If the unpaid balance shall exceed the cost of completing the buildings, such excess shall be paid by the owner to the contractor; but if such expense shall exceed such unpaid balance, the contractor shall pay the difference. The expense incurred by the owner, as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the architect, whose certificate thereof shall be conclusive upon the parties."

"The contractor is to show evidence before each payment is made that there is no claim for material or labor against said buildings. The final payment shall be made within five days after this contract is fulfilled. All payments shall be made upon written certificates of the architect to the effect that such payments, and the amount of such payments, have become due. If at any time there shall be evidence of any lien or claim for which, if established, the owner of the said premises might become liable, and which is chargeable to the contractor, the owner shall have the right to retain out of any payment then due, or thereafter to become due, an amount sufficient to completely indemnify him against such lien or claim. Should there prove to be any such claim after all pay-

ments are made, the contractor shall refund to the owner all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the contractor's default. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or the final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials."

See Text, § 35.

§166. Building and Construction Contract. Clauses.

(Schuler v. Eckert, 90 Mich. 168.)

"Fourth. Should the contractors at any time during the progress of said work become bankrupt, refuse or neglect to supply a sufficiency of material or of workmen, or cause any unreasonable neglect or suspension of work, or fail or refuse to follow the drawings and specifications, or comply with any of the articles of agreement, the proprietor or his agent shall have the right and power to enter upon and take possession of the premises, and may at once terminate the contract, whereupon all claim of the contractors, his executors, administrators, or assigns, shall cease; and the proprietor may provide workmen sufficient to complete said works, after giving 48 hours' notice, in writing, directed and delivered to the contractors, or at their residence or place of business, and the expense of the notice and the completing of the various works will be deducted from the amount of contract, or any part of it, due or to become due to the contractors. But if any balance on the amount of this contract remains after completion in respect of work done during the time of the defaulting contractors, the same shall belong to the persons legally representing them, but the proprietor shall not be liable or accountable to them in any way for the manner in which he may have got the work completed."

See Text, § 35.

§167. Building and Construction Contract—Clauses.

The said building is to be completed and delivered to the party of the first part entirely finished and ready for the occupation of tenants on the day of, 19...., unless such delivery be prevented by accidental fire.

The party of the first part may make, or require to be made, alterations in the plan of construction from that herein and in said specification and plan expressed, without annulling or invalidating this agreement; and, in case of any such alterations, the increase or diminution of expense occasioned thereby shall be estimated according to the price fixed by these presents for the whole work and materials, and allowances shall be made on one side or the other, as the case may be.

If there shall be any delay on the part of the party of the second part, in erecting or completing said building, that in the opinion of the superintendent will prevent its being completed on the day herein specified, then the party of the first part may, at his option, either employ persons other than the party of the second part to do the whole or any part of said work, and furnish the whole or any part of said materials, and deduct the cost of the same from the sum hereinbefore agreed to be paid by the party of the first part, or leave the completion of said building unto the party of the second part, and enforce his claim for damages, should said building be not completed on the day herein specified.

If the said building shall not be finished, completed, and delivered in manner aforesaid by the said day of next, the said party of the second part shall forfeit the sum of dollars for each and every day from and after that time during which the said building shall remain unfinished, and not completed and delivered as aforesaid, to be deducted from the sum hereinbefore agreed to be paid by the party of the first part; time to be of the essence of this contract.

In case of any disagreement between said parties, relating to the performance of any covenant or agreement herein contained,

such disagreement shall be referred to three disinterested persons, one to be chosen on each side, and they two to choose another; the decision in writing, signed by any two of whom, shall be final.

See Text, § 35.

§168. Carriers' Contract. Ticket.

(Carvey v. Detroit, etc., R. Co., 133 Mich. 660.)

D. & M. RY. CO.
EXCURSION TICKET
BAY CITY
—TO—
TURNER
VOID IF DETACHED
Form 000

DETROIT & MACKINAC RAILWAY CO.
EXCURSION TICKET.
TURNER TO BAY CITY.

Good for One FIRST-CLASS Passage Subject to the following Contract:—In consideration of this Ticket being sold at a reduced price from the regular First-Class rate, it is hereby understood and agreed upon by the purchaser that it will be good for passage only until

JANUARY 2ND, 1902,

after which it will be void. No Stop-over Checks will be given on this Ticket, it being good only for a Continuous Passage.

T. G. WINNETT,
General Passenger Agent.

Form 000

See Text, § 15.

§169. Carriers Contract. Express Receipt.

.....19...
 Received from
said to contain.....
 Valued atDollars
 Marked

Which we undertake to forward to the nearest point of destination reached by this Company, subject expressly to the following conditions, namely: This Company is not to be required to make delivery of said property at any point where no delivery service is maintained, nor at any point beyond the delivery limits established by this Company at the date hereof. This Company is not to be held liable for any loss or damage, except as forwarders only, nor by the dangers of navigation, by the Act of God, or of the enemies of the Government, the restraints of Government, mobs, riots, insurrections, pirates, or from or by reason of the hazards or dangers incident to a state of war. Nor shall this Company be liable for any defaults or negligence of any person, corporation or association, to whom the above described property shall or may be delivered by this Company, for the performance of any act or duty in respect thereto, at any place or point off the established routes or lines run by this Company, and any such person, corporation or association is not to be regarded, deemed or taken to be the agent of this Company for any such purpose, but on the contrary, such person, corporation or association shall be deemed and taken to be the agent of the person, corporation or association from whom this Company received the property above described. It being understood that this Company relies upon the various Railroad and Steamboat lines of the country for its means of forwarding property delivered to it to be forwarded, it is agreed that it shall not be liable for any damage to said property caused by the detention of any train of cars, or of any Steamboat upon which said property shall be placed for transportation; nor by

the neglect or refusal of any Railroad Company or Steamboat to receive and forward the said property.

It is further agreed that this Company is not to be held liable or responsible for any loss of or damage to said property or any part thereof, from any cause whatever, unless in every case the said loss or damage be proved to have occurred from the fraud or gross negligence of said Company or their servants, nor in any case shall this Company be held liable or responsible, nor shall any demand be made upon them beyond the sum of on a shipment of lbs. or less, and not exceeding cents per lb. on a shipment weighing more than lbs., and said property is hereby valued at and the liability of the Express Company is limited to the values above stated, unless a greater value is declared at the time of shipment; nor upon any property or thing unless properly packed and secured for transportation; fragile fabrics and fabrics consisting of or contained in glass will be taken at owner's risk only. In no case shall this Company be liable for any loss or damage unless the claim therefor shall be presented to it in writing, at this office within sixty days after this date, in a statement to which this receipt shall be annexed. If any sum of money besides the charges for transportation is to be collected from consignee on delivery of the property described above, and the same is not paid within thirty days from the date hereof, the shipper agrees that this Company may at its option return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this Company for such property while in its possession for the purpose of making such collection, shall be that of Warehouseman only. And it is further agreed that this Company shall not be liable for loss of or damage to Baggage addressed to Railroad, Steamboat or Steamship lines, after the same has been left at the usual place of delivery, to such lines. The stipulations contained herein shall extend to the benefit

of each and every Company or person to whom the said property may be delivered for transportation. The party accepting this receipt hereby agrees to the conditions herein contained.

For the Company,

.....
The Company's charge is based on a value of not exceeding \$..... on a shipment of lbs. or less, and not exceeding cents per lb. on a shipment weighing more than lbs. and the liability of the Express Company is limited to the values above stated, unless a greater value is declared and paid for or agreed to be paid for at the time of shipment. Fragile fabrics and fabrics consisting of, or contained in glass accepted at owner's risk only.

See Text, § 15.

§170. Carriers' Contract. Conditions.

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier, or party in possession (and the burden to prove freedom from negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and

held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona-fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has

been represented in writing by the shipper or has been agreed upon or is determined by the tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage, or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or, for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading and unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification of tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities,

limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

See Text, § 15.

§171. Carriers' Contract. Live Stock.

(Weaver v. Ann Arbor Railroad Co., 139 Mich. 590.)

"That the said shipper is, at his own sole risk and expense, to load and take care of and to feed and water said stock whilst being transported, whether delayed in transit or otherwise, and to unload the same, and neither said carrier nor any connecting carrier is to be under any liability or duty with reference thereto, except in the actual transportation of the same.

That said shipper shall see that all doors and openings in said car or cars are at all times so closed and fastened as to prevent the escape therefrom of any of said stock, and said carrier or

any connecting carrier shall not be liable on account of the escape of any of said stock from said car or cars.

That no claim for damages which may accrue to the said shipper under this contract shall be allowed or paid by the said carrier, or sued for in any court by the said shipper, unless a claim for such loss or damage shall be made in writing, verified by the affidavit of the said shipper or his agent, etc.

And it is further agreed by said shipper that, in consideration of the premises and of the carriage of a person or persons in charge of said stock upon a freight train of said carrier or its connecting carriers without charge other than the sum paid or to be paid for the transportation of the live stock in charge of which he is, the said shipper shall and will indemnify and save harmless said carrier and every connecting carrier from all claims, liabilities, and demands of every kind, nature and description, by reason of personal injury sustained by said person or persons so in charge of said stock, whether the same be caused by the negligence of said carrier or any connecting carrier, or any of its or their employes, or otherwise.

And does hereby acknowledge that he had the option of shipping the above described live stock at a higher rate of freight according to the official tariffs, classifications, and rules of the said carrier and connecting carrier, and thereby receiving the security of the liability of the said carrier and connecting railroad, and transportation companies as common carriers of the said live stock upon their respective roads and lines, but has voluntarily decided to ship same under this contract at the reduced rate of freight above first mentioned.

..... Company,

By....., Station Agent.

....., witness.

I hereby sign my name as a means of identifying myself as original signer of this contract.

.....

In consideration of the carriage of the undersigned upon a

freight train of the carrier or carriers named in the within contract, without charge, other than the sum paid or to be paid for the carriage upon said freight train of the live stock mentioned in said contract, of which live stock I am in charge, the undersigned do hereby voluntarily assume all risk of accidents or damage to his person or property, and do hereby release and discharge the said carrier or carriers from every and all claims, liabilities, and demands of every kind, nature, and description, for or on account of any personal injury or damage of any kind sustained by the undersigned so in charge of said stock, whether the same be caused by the negligence of the said carrier or carriers, or any of its or their employees, or otherwise.

.....,

Signature of man in charge.

....., witness.

See Text, § 15.

§172. Charter Contract.

This agreement entered into this day of, A. D. 19..., between party of the first part of the city or county, state of, party of the second part of the same place (*or as the case may be*).

Witnesseth, that the said party of the first part, owner of the schooner of the port of, burthen tons, agrees to charter to party of the second part, said schooner. And it is further agreed between said parties that the said schooner, being now ready, and fit, for voyage she is about to undertake shall proceed as soon as possible, manned, equipped at the sole expense of the said party of the second part, who is to have the use of said schooner for the purpose of making a voyage from to, on taking there the cargo of supplies and thence to the port of, State of, with a cargo of iron ore; and said schooner is not to be laden in a manner which shall render her unequal to the emergencies of the weather. It is further

agreed between said parties that said cargoes at either end of the route are to be put on board and taken out at the expense of the said party of the second part, and all expenses attending the performance of the voyage are also to be at the expense of the said party of the second part, provisioning or otherwise.

And it is further agreed between said parties that if said schooner shall be absent beyond the expiration of her insurance said party of the second part is to have same extended at his own expense and risk until she shall arrive at the port of , where said schooner is to be delivered to said party of the first part in as good a condition as when received, aside from the wear and tear, in damages by disaster or otherwise. In the meantime damage to said schooner to be repaired and made good by said party of the second part. The said party of the second part agrees to and shall pay to said party of the first part for the use and charter of the aforesaid schooner as above specified, on or before day of next, the sum of dollars lawful money.

In witness whereof we have set our hand and seal this day of , A. D. 19....

§173. Composition with Creditors Contract.

To all to whom these presents shall come: We, whose names are hereunder written, and seals affixed, creditors of , of , send greeting: Whereas, the said does justly owe, and is indebted unto us, his said several creditors, in divers sums of money; but by reason of sundry losses, disappointments, and other damages, happened unto the said , he is become unable to pay and satisfy us of our full debts, and just claims and demands, and therefore we, the said creditors, have resolved and agreed to undergo a certain loss, and to accept of cents, for every dollar owing by the said , to us, the several and respective creditors aforesaid, to be paid in full satisfaction and

discharge of our several and respective debts: Now, know ye, that we, the said creditors of the said do, for ourselves, severally and respectively, and for our several and respective heirs, executors and administrators, covenant, promise, compound and agree, to and with the said, by these presents, that we, the said several and respective creditors, shall and will accept, receive and take, of and from the said for each and every dollar that the said does owe and is indebted to us, the said several and respective creditors, the sum of cents, in full discharge and satisfaction of the several debts and sums of money that the said does owe and stand indebted unto us; to be paid unto us, the said several and respective creditors within the time or space of months next after the date of these presents; and we the said several and respective creditors, do severally and respectively covenant, promise and agree, to and with the said, that he, the said, shall and may from time to time, and at all times within the said time or space of months next ensuing the date hereof, assign, sell, or otherwise dispose of all his goods and chattels, wares and merchandise, at his own free will and pleasure, for and towards the payment and satisfaction of the said cents for every dollar the said does owe and is indebted unto us, as aforesaid; and that neither we, the said several and respective creditors, nor any or either of us, shall or will, at any time or times hereafter, sue, arrest, molest, or trouble, the said, or his goods and chattels, for any debt or other thing, now due and owing to us or any of us, his respective creditors; so as the said well and truly pay, or cause to be paid, the said sum of cents for every dollar he does owe and stand indebted to us, respectively, within the said time or space of months next ensuing the date hereof; and all and every of the grants, covenants, agreements and con-

ditions, herein contained, shall extend to and bind our several executors, administrators and assigns.

In witness whereof, we, the undersigned, have hereunto set our hands and seals this day of , A. D. 19....

See Text, § 38.

§174. Compromise and Settlement Contract. To Conduct Business.

Whereas, said hereinafter called the debtor is indebted to the parties, whose names are subscribed hereto, and hereinafter called the creditors, in the several amounts set opposite their respective signatures, which debts said debtor is now unable to pay in cash, and

Whereas, the stock in trade and other assets of said debtor are sufficient to pay said debts and which can only be accomplished by giving time in converting said stock into money, the creditors have mutually agreed to permit said debtor to conduct and continue his business under the direction and supervision of a committee appointed by the creditors, for a period of years from the date hereof.

Now, witnesseth: That in consideration of the agreements and promises of one another of said creditors and the debtor, the said creditors hereby give and grant unto the said debtor, full liberty and license to conduct his business of and to turn and convert into money all his stock in trade and other assets under the supervision of said committee as hereinafter specified, for the said period of from and after the date hereof, and said creditors agree to refrain from instituting or bringing suit or other legal proceedings during said period, or otherwise do anything that might molest him in converting his assets and property into cash.

That said creditors hereby appoint to act as their committee and agents to represent said creditors in

the performance and execution of this agreement, and to which appointment said debtor hereby assents.

That further in the consideration of the premises and agreements of the creditors herein contained, said creditor promises and agrees and hereby does promise and agree :

First, that he will make and render unto said committee on or before, 19...., a true, just and full inventory of all the assets and property, both real and personal, with a statement of all incumbrances and liens thereon, or affecting the same; also a true and complete list of all his creditors, with the amount due each; said inventory and list of creditors shall be verified by his affidavit.

Second, that he will not hypothecate his property or assets, until all of said debts have been paid in full, and that he will give no preference or security to any creditor.

Third, that he will not hypothecate or pledge his credit in any form or manner as surety, guarantor or endorser on any obligations whatsoever.

Fourth, that he will give his entire time and attention to the conduct and management of said business, and exert his best efforts to render the business profitable and self-sustaining during said period above specified.

Fifth, that he will not engage in other business during said time.

Sixth, that he will make every possible effort to collect all outstanding accounts, credits and choses in action, and that he will not settle or release any account unless fully paid, without the committee's consent.

Seventh, that he will not make any sale of his stock or property or assets except in the usual course of business and in accordance with the usual retail method of selling his goods, wares, and merchandise, and in the event of any opportunity presenting itself by which he can effect a sale in some other manner he shall submit such proposition in writing to the members of said committee for the purpose of obtaining their consent or refusal.

Eighth, that in the event, that he should receive an offer of

compromise or settlement of an outstanding account, he shall submit such proposition in writing to the members of said committee for the purpose of obtaining their consent or refusal.

Ninth, that he shall keep just and accurate books of account, showing all moneys received and paid out, and a record of all matters and transactions relating to his said business.

Tenth, that he shall at any time, when so requested, submit all the books, records, documents, letters, written and sent, pertaining to said business to the inspection of said committee, and they shall have authority to examine them whenever they so desire.

Eleventh, that he shall make regular daily deposits of all the moneys received from sales and from the collection of accounts and choses in action in the Bank of, and this money so deposited is to be checked out only for the purposes hereinafter mentioned. All checks drawn for such purposes may be countersigned by one member of said committee.

Twelfth, that he will make and render a general statement of the business giving detail account of all receipts, payments, and expenses, as well as a statement of all other matters and transactions relating to said business, on the first of each and every month during the said period to said committee: The first statement to be rendered on the day of, A. D. 19....

Thirteenth, that he will pay or cause to be paid to each and every one of the undersigned creditors the full amount of the several debts due to them in the manner herein provided.

Now, witnesseth: That the parties hereto, on the considerations mentioned aforesaid further mutually agree:

That said business shall be under the general supervision and control of said committee, and they shall have full authority to hire and determine the number of clerks and employes, the purchasing of all the goods necessary to replenish the stock, and the fixing of all expenses, and in the event, the business should prove unprofitable any time during said period the said

committee has full authority to discontinue said business and sell the same as a going concern.

That said committee shall pay out of said money, received from the sale of the stock and assets, all the costs of this agreement, the current expenses of the business, and the sum of per month for the said debtor's living expenses, also all the small debts owing by said debtor, which do not exceed dollars in amount. It shall further be the duty of the committee to pay from time to time whenever there shall be a sufficient sum on hand a dividend of per cent to the said undersigned creditors, which said sum shall be distributed among said creditors pro rata.

That said committee shall be entitled to a sum equal to per cent. on all the moneys received and disbursed by them and which said sum shall be paid from the surplus moneys over and above the total amount of said debts due the said creditors, after the said debts have been paid in full to each creditor in accordance with the sum due him and set opposite his name, as herein specified.

However, if the assets and property when converted into cash should prove to be insufficient, then said compensation shall be deducted from the dividends due said creditors.

That after payment of all said debts, expenses, costs and compensation of said committee as hereinbefore provided, the surplus moneys, if any, shall be paid unto said debtor, and in the event that all said debts be paid in full before the expiration of said period as specified herein, then this agreement shall terminate, and said debtor shall be restored to the full and complete control of said business, assets and property, but on the other hand if, at the expiration of said period mentioned aforesaid, all of said debts shall be still unpaid in full the said committee shall have authority to extend the term at their discretion or close out the business at the earliest possible moment.

That this agreement shall be binding only when signed and executed on or before, 19..., by all the creditors of said debtor whose debts exceed the sum of

That in the event said debtor shall die before the expiration of said period, or the extension thereof, or if said debtor shall fail to faithfully perform the agreements on his part to be performed under this contract to the entire satisfaction of said committee, then this agreement to be null and void, and said creditors may protect their rights according to law.

In witness whereof, the parties have hereunto set their hands and seals this day, A. D. 19....

See Text, § 37.

§175. Compromise and Settlement Contract. To Pay Attorney Fees.

(Grand Rapids & Ind. Ry. Co. v. Cheboygan Circuit Judge, 17 D. L. N. 270.)

Memorandum of agreement made and concluded this day of, A. D., by and between, of,, party of the first part, and the Company, a corporation, party of the second part.

The said party of the second part as part consideration for settlement, this day made by and between the parties hereto, hereby covenants and agrees with said first party to pay to the attorneys of said first party as compensation for their fees and disbursements for and on behalf of said first party, an amount not to exceed the sum of dollars.

In witness whereof the said parties aforesaid have hereunto set their respective signatures in duplicate the day and year above written.

By.....

See Text, § 37.

§176. Condition in Contracts. Condition Precedent.

(Hill v. Matthews, 78 Mich. 377.)

"Whereas, certain professional services will be required in the General Land-office at Washington, it is hereby agreed between the said and

of, that in consideration of said warrants, above referred to, at per acre, he shall, if he so elects, be permitted to receive the same back upon the payment to the said of the sum of dollars per acre in the event of said application being rejected and refused by the highest authority having jurisdiction over such matters.

"It is hereby further agreed that in consideration of an undivided one-eighth interest in and to the above described lands, conditioned upon the title thereto eventually vesting in the said from the United States the said will, at his own expense, use his whole influence and legal ability in the direction of forcing the aforesaid applications to a successful issue, and, if possible for him to do so, to secure patents from the United States for the aforesaid lands, all or in part, in the name of the said

"In consideration of such influence and legal assistance, the said hereby agrees, upon receipt of patents from the United States covering the lands aforesaid, or any portion thereof, to deed to the said an undivided one-eighth interest in and to such parcels of the said lands, and as title may vest in him from the United States, through the assistance and procurement of the said

"It is expressly understood and agreed by and between the parties hereto that, in the event of the failure of the said to procure, or cause to be procured, patents from the United States to issue to and in the name of, then he, and the said, is hereby estopped from demanding or securing any compensation for his services in trying to secure the said patents."

See Text, § 22.

§177. Condition in Contracts. Condition Subsequent.

(Adrian Water Works v. City of Adrian, 64 Mich. 584.)

"Said works to be considered complete when complying with the conditions and capable of performing all of the requirements as described in section seven of this contract."

"Sec. 7. Said second party covenants and agrees that said water-works, when completed, shall be first-class in every detail; the pipes of standard weight, tested at a pressure of three hundred pounds to a square inch before being laid down, and shall have sufficient capacity and power to throw eight fire streams to a perpendicular height of one hundred feet, or maintain its equivalent in pressure at the nozzle; said streams to be thrown through fifty feet of hose, and through one-inch nozzles, not more than two to be taken from a six-inch line, four from an eight-inch line, six from a ten-inch line, and eight from a 12 or 14 inch line.

"And said second party shall, during all the time aforesaid, keep said water-works up to said capacity and power; and that upon the completion of said works, and before any liability shall attach to said city under this contract, said works shall undergo and fulfill said requirements in capacity and power, and that it must be fully demonstrated by submitting said works to such tests as may be reasonable to ascertain their utility, and as the common council of said city may require: (*Provided*) however, that said tests shall not exceed two days' duration, and comply with the requirements of this section.

"If said works, when completed and tested, shall not comply substantially with the requirements in letter and spirit of this section, or are not, as soon as practicable, made so to comply, the party of the first part shall have power to require such compliance, and they shall not incur any liability for rent until the works are brought up to said required standard. But, should said water-works, at the time above mentioned, and during said tests, comply with the requirements of this section in letter and spirit, then said works shall, by the party of the first part, be

accepted as completed; and, from the time of such acceptance, shall commence the rents of the above-mentioned hydrants; and such tests are to be made as soon as the second party shall require.

"Said second party agrees to construct the building in which said pumping machinery shall be placed, of brick, and to be reasonable secure against danger or loss by fire. Said second party also agrees that the hydrants shall be the Holly pattern; the pumping machines and engines shall be of three million gallon capacity, and be either of the Gaskell duplex or the Holly quadruplex."

"The payment of this sum of ten thousand dollars per annum to be dependent upon the said second party supplying wholesome water during all the term aforesaid, to wit, thirty years, unless said party of the first part shall, before the expiration of the same, purchase said work; water to be taken from well and springs sufficient to supply all the inhabitants of said city with wholesome water for domestic and fire purposes. And, further, that, notwithstanding anything in this contract set forth, no liability shall attach to said party of the first part, nor shall the rental of said hydrants begin, until said water-works are fully completed in such substantial compliance with the terms, requirements, and conditions of this contract, and said works are accepted by the common council of said city."

See Text, § 22.

§178. Condition in Contracts. Showing Implied Condition.

(Hunter v. N. Y. & Saginaw Solar Salt Co., 14 Mich. 98.)

"This agreement, made this day of, A. D., between and of, constituting the firm of and, of the first part, and the of the second part, witnesseth.

Whereas, said second party has a contract with for the purchase of feet of lumber, to be delivered at their mill, in, in the early part of the present

season, and have also a contract with
by the terms of which said
have agreed to sell and deliver to said second party a like quantity of lumber, to be delivered at their mill in the early part of the present season; and,

Whereas, said second party is bound by the terms of said agreements, (which agreements said first parties have examined and know the contents thereof,) to receive said lumber at the docks of said when sawed, and to remove the same; and,

Whereas, said first parties are desirous of contracting to remove said lumber from the mills of said and, and to deliver the same to said second party at its docks and works on the west bank of river, just below, in county, and at the docks of the

Now, therefore, It is agreed by and between said parties, as follows: Said first parties, in consideration of the agreements hereinafter contained, to be kept and performed by said second party, agree to take all the lumber so to be delivered to said second party, by and and by, under the contracts above referred to, and to receive the same in assorted piles upon the docks of the mills where sawed, and convey upon boats or scows, and deliver feet of said lumber to said second party upon its docks at its works below, in county, and feet of said lumber upon the docks of the; all to be delivered for the price of per feet, to be paid as hereinafter stated.

Said first parties further agree that they will furnish all the men and lighters, and everything else needful for the prosecution and completion of said work, according to the terms of this agreement, and will receive and remove said lumber from the docks of the mills where manufactured, as fast as the same shall be sawed, and will not at any time allow said lumber to accumu-

late at the docks of either mill where sawed, to an amount exceeding one scow load at each mill.

Said first parties further agree, that in receiving, conveying and delivering said lumber to said second party at its docks, and at the docks of the, as above specified, they will handle said lumber in a careful and proper manner, so as not to injure the same, and will snugly pile all said lumber upon the docks of said second party and said in assorted piles, placing each length, kind, and quality of lumber in a pile by itself, and will pile said lumber at such places and upon such portions of said docks as said second party, by its superintendent, may from time to time direct.

Said first parties further agree that they will commence the delivering of said lumber upon the docks of said second party within fifteen days from the time that either or shall commence to saw and deliver lumber to said second party under the contracts above mentioned, and as much sooner as possible, and will deliver said lumber as fast as it shall be required by, who has the contract for constructing and erecting the for said second party, provided it shall be sawed so fast by or either of them.

Said second party agrees to pay said first parties for conveying, delivering, assorting and piling said lumber as above specified, the sum of for each feet of lumber so conveyed, delivered, assorted and piled, payable semi-annually at the middle and close of each month, according to the inspector's certificate of quantity, as the work progresses, in drafts of the superintendent of said company at one day's sight, on the company in New York."

See Text, § 22.

§179. Conditional Sale Contract.

This agreement made and entered into this day of, A. D. 19 . . ., by and between, of the city of and State of, party

of the first part, and, of the City of
and State of, party of the second part.

Witnesseth: That in consideration of the party of the first part letting for hire unto the party of the second part a
and who will hire and take said
for the term of subject, however, to being terminated as hereinafter provided, at the monthly rent of
dollars, to be paid promptly on the day of every month, the first payment to be made on the day of next.

That, in the event, the party of the second part shall fail to make prompt payments or shall default in payment as provided, or shall suffer any act which may prejudice the rights of the party of the first part, or shall have any execution levied on his goods, or shall be adjudged a bankrupt, or fail to observe the stipulation herein contained, the party of the first part may enter the premises occupied by the party of the second part, for the purpose of resuming and taking possession of said
and further that party of the second part may at any time terminate the hiring by returning the in good repair to the party of the first part.

That, however, in the event the hiring shall continue for the period of and the party of the second part shall be desirous of buying the, the party of the first part will sell the same to said second part for the sum of
dollars in addition to the aforesaid monthly payments, and will transfer the property in the but until such payment and transfer is made the property exclusively belongs to the party of the first part.

That the party of the second part agrees and hereby does agree during the term of the hiring said to take good care of the said; to keep it in first class repair; to pay all license fees and taxes to which the said may be subjected; to pay all damages to the same which may arise from accident, fire or otherwise, and not to part with the custody of the said

In witness whereof the parties have hereunto set their hands and seal this day of, A. D. 19....

See Text, § 36.

§180. Conditional Sale Contract.

(Preston v. Whitney, 23 Mich. 264.)

..... hereby agree to sell the following described property, to wit:, manufactured by the, No., to of the city of, state of, who agrees to take the same upon the following conditions; the said to pay therefor dollars as follows: dollars on the delivery of this agreement, the receipt of which is hereby acknowledged; and the sum of dollars every days thereafter, until the day of, when the full sum of dollars with interest as above named, shall be paid; it being expressly understood that the said remain the property of said, until the full payment as herein agreed shall be paid, and that it shall remain at street, in unless the written assent of said is given to move the same. In case the said fails to make any payment as specified, at, and from, the time of such failure, said shall be entitled to the possession of said, and said agreement to sell said instrument shall become void.

Witness our hands this day of,
(Signed by respective parties.)

See Text, § 36.

§181. Conditional Sale Contract.

I, the undersigned, agree to pay for the merchandise listed below, in addition to the sum of \$. which I have already paid \$. in equal installments of \$. on the day of each month until fully paid.

(Here follows itemized list of articles purchased and price of each.)

It is expressly understood and agreed that the title and right to possession in and to all of said property shall remain in, until the said total purchase price shall have been fully paid, and that then and not until then shall the title of said property vest in the signer hereof. In the event of the non-payment of any of said installments, as agreed at the times hereinabove specified or of the sale, incumbrance or removal of said property, or any of it, without the written permission of said so to do, or of the non-compliance in any respect with this agreement the said may declare all of the said purchase price to be due and payable at once, or rescind said sale and immediately, without previous notice or demand enter upon any premise and resume possession of and remove said property with or without legal process and with or without force, (and the signer hereby waives any claim or right of action for trespass or damages by reason thereof) and said shall thereupon have the absolute and unconditional title to said property free from any claims of the signer hereof by reason of any payments made thereon. In such case it is agreed that all payments theretofore made may be retained by said as liquidated damages for the breach of any of the terms of this agreement by the undersigned, and also as compensation for the use of said property during the time it shall have remained in the possession of the undersigned. But any extension of the times of payments hereunder or the receipts by said company of any portion of the said purchase price after any default or any breach of the terms of this agreement shall not operate as a waiver of any of the rights under this agreement. And it is further agreed that in the event of the failure of the signer hereof to pay any installments as agreed, at the times hereinbefore specified, the signer hereof will, upon demand of said, return said property to said at his own expense; and in the event that said shall be compelled to pay or become liable for any attorney's fees or

other expenses in the connection with the enforcement, the undersigned will pay any such fees, costs or expenses. Said property is delivered for use at the address given below and the undersigned agrees not to remove said property, or any part thereof, from said place until the total purchase price is paid in full, without the written consent of said And if said property is so removed without the written consent of said the undersigned of the said waives such breach of this agreement to pay all costs and expenses incurred by said in locating said property and protecting its rights hereunder.

It is further agreed that the risk of damage or destruction to said property from any causes whatsoever (ordinary wear and tear excepted) shall be upon the undersigned, although the title thereto is not to pass until the full payment of the aforesaid purchase price.

.....

Goods cannot be removed from their present address without permission of this company.

See Text, § 36.

§182. Conditional Sale Contract.

I hereby agree to hold in my possession one valued at dollars, being the property of & Co., avenue,, which instrument I agree to purchase, and pay for the same to the said & Co., or their order, at, the sum of dollars in two installments, as follows:.....note at months from, andnote at months from, with per cent. interest added until paid, payable annually from date hereof on each installment until paid.

It being expressly understood and agreed that the said instrument is to remain the property of the said

& Co., and subject to their direction, and not to be moved from place to place without their written assent, until the full amount shall have been paid, as above specified, at which time, and not till then, is the said instrument to be my property.

It is further agreed, in case of default in any of the conditions above stipulated to be performed, that the said & Co. may declare this agreement void, and take possession of the said instrument wherever it may be found, without legal process; and the payments that shall have been made may be retained to apply as damages for the non-performance of this agreement.

I also agree to have the said instrument fully insured for the benefit of the said & Co., and that the policy will remain in their hands until the instrument is fully settled for.

Given this day of, in the year,
.....

(Signed)
See Text, § 36.

§183. Conditional Sale Contract.

.....
KNOW ALL MEN BY THESE PRESENTS, That I.....
..... have purchased of the
the receipt whereof is hereby acknowledged, upon the following terms and conditions, to-wit: The sum of \$.....
thereof as rent in full to date hereof, and I do hereby agree to pay the sum of \$..... for rent thereof until the full sum of shall have been paid, as provided herein, whereupon said shall be and become my property. But if default be made in the payments specified herein it is understood and agreed that the full amount mentioned herein shall at once become due and payable and the said is hereby authorized to take possession of and sell at public auction, after such notice, as required by law for constables' sales, the goods, chat-

tels, and personal property hereinbefore mentioned, or as much thereof as may be necessary to satisfy the said debt, interest and reasonable expenses, and to retain the same out of the proceeds of such sale. And the said is hereby authorized, at any time when they or it shall deem themselves or itself insecured, or if the said part... of the first part shall sell, assign, convey or dispose of, or attempt to sell, assign, convey or dispose of the whole or any part of the said goods and chattels, or to remove or attempt to remove the whole or any part thereof from the said without the written assent of the part... of the second part endorsed herein, then and from thenceforth it shall and may be lawful for the second part..., its successors, representatives and assigns, or its authorized agents, to enter upon the premises of the said part... or any place or places where the said goods and chattels herein mentioned, or any part thereof, may be, and take possession thereof, and dispose of the same in the manner above specified, or at a private sale as it or they, said second party, shall see fit.

And the said first part... hereby agrees, that upon two weeks' payment becoming in arrears, upon violation by h... of the conditions herein expressed, will return the said property, goods and chattels to said, at their office, St.,, And the said first part... further agrees to keep said property, goods and chattels herein named, in the most safe and secure manner, free from injury, and return said property (if return be necessary hereunder), in as good condition as when first received, except usual and unavoidable wear of the same. It is also understood and agreed that title to said property shall not pass to first party until the purchase price of any judgment obtained thereon is fully paid.

In presence of (Signed)

Name

Address

Business

See Text § 86.

§184. Conditional Sale Contract.

(Giddey v. Altman, 27 Mich. 206.)

This agreement, made and entered into this day of between, of the city of, in the county of, in the state of, and & Co., of the city of, county of, and state of, witnesseth: that whereas, the said & Co. have this day agree to purchase from the said one, of the manufacture of & Co.,, No., upon the terms and conditions following:

The said & Co., in payment for said, hereby deliver and transfer to the said subscription tickets for the newspaper known and published in the city of as, together with the premiums drawn by said tickets, on the day such distribution shall take place; and we, the said & Co., hereby agree and obligate ourselves, for and in consideration of the premises, to repurchase from said, paying therefor the sum ofdollars and cents each, in cash, all the tickets that shall remain in the hands of the said, not disposed of and unsold, of said tickets, on the day of, A. D... And it is hereby further agreed by the said, that he shall use all reasonable exertion and diligence to sell and dispose of said subscription tickets; it being expressly understood and agreed that the said is to remain the property of the said and subject to his directions, and not to be moved from place to place without his written assent until all the con-

ditions herein specified are fulfilled. It is further agreed in case of default in any of the conditions above stipulated to be performed, that the said may declare this agreement void, and take possession of the said instrument wherever it may be found, without legal process and the payments that shall have been made may be retained to apply as damages for the non-performance of this agreement. I also agree to have this said instrument fully insured for the benefit of said, and that the policy will remain in his hands until the instrument is fully settled for.

See Text, § 36.

§185. Conditional Sale Contract.

This agreement, made and entered into this day of, A. D. 19..., by and between..... of the city of, county of, state of, party of the first part, and of of, state of, party of the second part, WITNESSETH: Whereas, on the day of, A. D. 19..., the said parties hereto entered into a partnership under the name and style of upon the terms and conditions stated in the articles of co-partnership between the said parties, which said articles were dated the said day of, A. D. 19...

And whereas, the said party of the second part is desirous of purchasing the interest of said party of the first part in said (*insert name of the new partnership formed*) and it is agreed between the parties hereto, that the value of said interest of said in said co-partnership is the sum of dollars.

Now it is agreed that the said co-partnership between the said party of the first part and the said party of the second part shall continue under the name and style of (*insert name of the*

new partnership formed) upon the following terms and conditions.

First, said party of the first part agrees to sell, and the said party of the second part agrees to purchase, the interest of said party of the first part in said co-partnership, for the sum of dollars, which shall be paid by said party of the second part to the said party of the first part as follows: dollars upon the execution of these articles, dollars on or before day of, A. D. 19....;dollars on or before day of, A. D. 19....; and the balance of said purchase price to be paid as follows: dollars on the day of each and every month, commencing on the day of, A. D. 19...., and continuing on the day of each and every month thereafter until the full amount of said purchase price is paid, with interest upon the sums remaining unpaid at the rate of per cent, per annum, semi-annually, said interest payable upon the day of and, respectively.

It is agreed that said party of the first part shall keep, hold and retain, as his interest in said co-partnership from time to time may appear the title and ownership of the property, stock and effects of the said (*insert name of new co-partnership formed*) until the value and complete performance of the agreement herein contained is effected. It being understood and agreed that the interest of said party of the second part in said co-partnership shall increase and the interest of said party of the first part decrease, in proportion to the payments made by said second party in accordance with the terms and conditions of this contract as hereinbefore stated; that so long as the terms and conditions of this agreement are complied with, and the payments aforesaid are made, the interest upon said payment hereinbefore provided shall be treated and taken by said party of the first part in lieu of his share of the profits of said co-partnership.

It is understood and agreed that said party of the second part shall have sole management and control of said business.

It is further agreed that if the said party of the second part shall pay the said party of the first part the sum of dollars in addition to the paid upon the execution of this contract, on or before the day of, A. D. 19..., with interest upon the payment hereinbefore stated from this date to the time of said payment, then said party of the second part shall be and become the absolute owner of all the right, property and effects whatsoever of the said (*insert name of the new corporation formed*).

In witness whereof, the parties have hereunto set their hands and seals this day of, A. D. 19....

See Text, § 36.

§186. Conditional Sale Contract.

All orders taken subject to the acceptance of

Please furnish or ship for the undersigned in care of your agent at, on or about the day of, 19....

1 No. 22 Gear Thresher, Pattern.
(*State size and kind of number, also whether geared or belt.*)
..... horseengine.
(*State size by horse-power, and whether portable, semi-portable or traction.*)

1 mountedhorse power.
(*State size; also whether mounted or down.*)

1 truck wagon for above separator.

1 foot folding stacker for above separator.
(*State length, whether 14 or 18.*)

with attachments for thresher.

These are charged for extra

with belting, fixtures and free extras, as provided in price-list.

We, the undersigned, agree to receive the above, subject to the

conditions named below, to pay the freight and charges thereon from factory, and further agree to pay to your order, in notes, as follows:

Cash.....\$.....	Note due.....\$.....
Note due.....\$.....	Note due.....\$.....
Note due.....\$.....	Note due.....\$.....
Note due.....\$.....	Note due.....\$.....

Notes to bear interest from date at per cent; to be accompanied by security as follows:

Post-office—

do (Sign here)

do..... (Seal)

County & State (Seal)

..... (Seal)

As a condition to this order, the above articles are warranted to be of good material, well made, and, with proper management, capable of doing as good work as similar articles of other manufacturers. If said machinery, or any part thereof, shall not fill this warranty, within ten days of first use, written notice shall be given to, and to the party through whom the machinery was purchased, stating wherein it fails to fill the warranty, and time, opportunity, and friendly assistance given to reach the machine and remedy any defects. If the defective machinery cannot then be made to fill the warranty it shall be returned to the place where received and another furnished on the same terms of warranty, or money and notes to the amount represented by the defective machine shall be returned, and no further claim be made on Continued possession or use of the machine, after the expiration of the time named above, shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of the purchasers, who agree thereafter to make no other claim on under warranty. In case any casting fail through any defect in its material during

the first season, defective piece shall be replaced without charge, except freight or express charges; but on any claim for replacement of defective castings, the defective pieces shall be presented to or the dealer through whom the machine was ordered, and shall clearly show the defects. Defects or failure in one part shall not condemn nor be grounds for claiming renewal, or for the return of any other part. All warranties to be invalid and void in case the machine is not settled for when delivered.

See Text, § 36.

§187. Conditional Sale Contract.

\$.....19....

For value received, promise to pay to the order of

Dollars, as follows:No.
at a trading price of (\$.....)Dollars

.....
balance ininstallments of
Dollars each commencing, 19..., with
interest annually at six (6) per cent
inst.

I hereby agree, that the title to the above described property, for which this note is given, is and shall remain in the said and under their direction until paid for in full. I also agree to keep the said instrument insured for the benefit of said as their interest may appear, and that said property shall not be removed from my present residence without their written consent, and that they shall have the power to retake said property at any time after default in payment, or failure on my part to keep any of the promises or agreements herein contained, and whatever has been paid shall be forfeited for wear and tear, rent and expenses of taking the same and for any damages and

expenses they may have been put to on my account or in making this sale, or by reason of such failure and forfeiture, and in case sufficient has not been paid at such time of retaking to cover an ordinary rental for the said property, as well as all damages and all expenses said may have been put to, then said shall have the right to collect such deficiency; it being optional with said to retake such property or to enforce payment of this note. The said shall have the right to replace the said property in case any rightful fault shall be found with that described above.

.....
See Text, § 36.

§188. Construction Contract. To Construe Previous Contract.

This Agreement made the day of, 19..., between of, of the first part, and of, of the second part:

Whereas, a difference has heretofore arisen between the parties to these presents, in relation to their respective rights and obligations under a certain contract, made on the day of, 19..., between them; and the parties hereto have now come to a mutual understanding and agreement respecting all the matters aforesaid, and propose to set forth the same in these presents, as declaratory of their respective rights and obligations from the date hereof, henceforward, for the government of themselves under the same:

Now, This Indenture Witnesseth, that the parties of the second part covenant, promise, and agree to and with the party of the first part, (*etc., according to the nature of the case*).

In witness whereof, the parties have hereunto set their hands this day of, 19....

§189. Copyright Contract.

This agreement, made the day of,

by and between, of,
and, of, bookseller and publisher,
witnesseth: That the said agrees
to sell, and does sell to the said all
his copyright, title, interest and property in and to a certain
book, written and compiled by the said,
entitled, (*give the title of the book at length*) and entered, and
copyright secured by the said in the
..... on the day of
....., in the year; and the said
also agrees to prepare and furnish a fair copy of the said work
to the printer to be employed by the said
and to superintend the printing, and correct the proof thereof;
provided, however, that it shall be printed in the
of, aforesaid.

In consideration whereof, the said
agrees to pay unto the said the
sum of dollars, on the day of
..... next.

It is understood between the aforesaid parties, that the first
edition of the work to be printed as aforesaid, shall not exceed
..... copies; and that if the said
shall, at any future time, determine to publish another edition
of the same work, he shall pay to the said,
in addition to the sum agreed to be paid, as aforesaid, the sum
of dollars for each and every subsequent
edition, not exceeding copies of the same,
to be due and payable immediately upon the issue thereof.

In witness whereof, the parties have hereunto set their hands
and seals this day of, A. D.
19....

§190. Corporation Contract. General Form.

(Hamilton's General Business Corporations.)

This Agreement, made this day of,

19..., by and between a corporation organized and existing under and by virtue of the laws of the state of, and having its principal place of business at the of, in the county of, and state of, party of the first part, and of the of in the county of and state of part... of the second part, for and in consideration of the mutual covenants and agreements herein contained, and in consideration of Dollars by said part... of the part to said part... of the part paid at the date hereof, receipt whereof is hereby acknowledged.

Witnesseth:

First. That said party of the first part hereby covenants and agrees to and with said part... of the second part, that (etc.)
.....

Second. That said part... of the second part hereby covenant.. and agree.. to and with said party of the first part, that (etc.)

Third. That the covenants and agreements herein set forth shall be equally binding upon the successors and assigns of the said party of the first part, and upon the heirs, executors, administrators and assigns of the said part... of the second part.

In Witness Whereof, the parties hereto have hereunto set their names and seals the day and year first above written.

(Name of Corporation.)

By.....
President.

.....
Secretary.

(Corporate Seal).

..... (L. S.)

§191. Corporation Contract. Subscription Before Organization.

(Hamilton's General Business Corporations.)

The undersigned desire to form a corporation to be organized under the manufacturing and incorporation laws, being Act 232 of the Public Acts of Michigan of 1885, amended, with a capital stock of \$150,000, to be called the Charles Wright Chemical Company, for the purpose of carrying on, in Detroit and elsewhere, the business of manufacturing and dealing in denitrifices, and to that end hereby agree, each in consideration of the agreements of the others, to join in the organization, and to subscribe for and take stock in such a corporation to the amounts, par value, set after our respective names. All details of said organization, other than the foregoing, may be determined by a majority in interest of the signers hereof.

.....

(*Hamilton's General Business Corporations.*)

I hereby subscribe for shares of the par value of \$..... per share, of the capital stock of Company, a Michigan corporation, for which shares I agree to pay to said company, in cash, the full par value of \$....., when and in such manner as the same shall be called in by the board of directors of said corporation.

Dated, 19....

..... (L. S.)

§192. Corporation Contracts. Re-organization.

Agreement, made this day of, 19..., between, and, a committee acting at the request and on behalf of the respective bondholders and stockholders of Company, and (hereinafter called the committee), of the first part, and the respective holders of the bonds and stocks of said companies who have assented and who shall here-

after assent to this agreement by depositing their bonds or stock as hereinafter provided, of the second part.

Witnesseth:

Whereas, the Company (hereinafter called the Company), made default on, on and on, in the payment of the interest which became due on said dates respectively upon bonds issued by it, secured by a mortgage to Trust Company, as trustee, and which mortgage is now in process of foreclosure; and the Company (hereinafter called the Company), a company formed by the consolidation of the Company and the Company, has made default on, and on, in the payment of the interest which became due on said dates respectively upon the consolidated bonds issued by it secured by a mortgage to Trust Company, of, as Trustee; and,

Whereas, it is necessary for the preservation and protection of the property and the rights and interests of the holders of both of said issues of bonds, and of the stocks of said companies that a plan of reorganization should be adopted, and the committee have at the request of a large number of the bondholders and stockholders of Company, and of the bondholders and stockholders of Company consented to act as a committee to effect such reorganization;

Now, Therefore, in consideration of the premises and of the agreements herein contained, and of other valuable considerations, the parties agree together as follows:

That the said and are hereby constituted and appointed a reorganization committee to exercise the powers and perform the duties herein set forth, and have consented to act in that capacity.

That, the committee shall invite, in such manner as it shall deem advisable, the respective bondholders and stockholders of

the and Companies to assent and become parties to this agreement, by depositing their bonds and stock certificates with Trust Company of, and fixing a time within which it may be done. Each bondholder who shall deposit his bond or bonds (with transfer thereof duly executed, if registered), with all said defaulted and all unmatured coupons or certificates of Trust Company, representing bonds heretofore deposited with it, and each stockholder who shall deposit his stock certificates duly indorsed shall receive therefor a certificate or certificates of said trust company in substantially the form hereto annexed, marked "A." Only the holders of such certificates of deposit shall be entitled to the benefits of this agreement.

That whenever and as soon as such percentages respectively as it may deem sufficient of the outstanding bonds and stocks of the Company and of the Company shall have been deposited hereunder, the committee may declare and certify that this plan is operative; provided, however, that if for any reason there shall not have been deposited hereunder within days from the date hereof such sufficient percentage as above recited of the outstanding bonds and stock, then this agreement shall be declared inoperative, and the securities deposited hereunder shall, on demand, without expense to the holders of the certificates issued hereunder, be returned to said holders on production of their respective certificates of deposit for cancellation.

That the committee may take any action under the mortgage to the Trust Company, or the mortgage to the Trust Company of, or upon any bonds so deposited which the depositors or any of them could have taken, and may cause the proceedings now instituted for the foreclosure of the Company's said mortgage to be continued, and may institute proceedings for the foreclosure of the Company's said mortgage, and shall have power to bid in or purchase the

property or franchises, or both, of the Company or Company, or both, or any part thereof, at any sale of the same, and generally to exercise all the powers which the holders of the certificates of deposit to be issued hereunder, or any of them, might exercise singly or collectively as bondholders or stockholders, and to use, if necessary, the bonds and stocks deposited hereunder, for the purpose of acquiring said properties and franchises, or any part thereof, and to pay therefor such amounts as in its judgment may be necessary to protect the interest of the certificate holders.

That the committee shall cause a new corporation to be formed under the laws of the state of, empowered to acquire title to the properties and franchises of the and Companies. Said corporation shall have a capital stock of \$....., which shall be divided into \$..... of per cent. noncumulative preferred stock, and \$..... of common stock. The new company shall issue bonds payable in gold in years to the amount of not more than \$....., with interest at the rate of per cent. per annum, from such date as shall be fixed by the committee, also payable in gold, which shall be secured by a first mortgage on the property and franchises of said new company then owned or thereafter to be acquired, except as to the property formerly of the, as to which (if acquired by the new company), it shall be a second mortgage. The new company shall also issue bonds, payable in gold in years, to the amount of \$....., with interest at the rate of per cent. per annum, from such date as shall be fixed by the committee, also payable in gold, which shall be secured by second mortgage on the property and franchises of said new corporation then owned or thereafter to be acquired, except as to said property (if so acquired), as to which it shall be a third mortgage.

That the committee shall cause the transfer to said new corporation of the properties and franchises of the Company and Company acquired by it, and,

immediately upon the transfer and conveyance to the said new corporation, said corporation shall issue and deliver to the committee its second mortgage bonds and preferred and common stock to the amounts above specified; and shall execute to a trustee a mortgage securing said bonds as above specified, and the new company shall also issue its first mortgage bonds to an amount not exceeding \$., and a mortgage to secure the same, as above specified.

That said bonds and stocks are to be used for the following purposes: (*Insert here the purpose for which the bonds and stock is to be made.*)

The bonds and preferred stock and common stock of the new company to be distributed, as above provided, to the bondholders of the Company, shall be distributed among such respective bondholders as shall be determined by the committee.

The bonds and preferred stock and common stock of the new company to be distributed, as above provided, to the bondholders of the Company, shall be distributed among such respective bondholders as shall be determined by the committee.

That the \$. of first mortgage bonds to be sold as aforesaid, shall, under the direction of the committee, be offered for subscription to the depositing bondholders of the Company at per cent. of their par, and each depositing bondholder of the Company shall have the right to subscribe within days from the deposit under this agreement of his bonds for such an amount of said first mortgage bonds as he may desire, subject to the right of the committee to reject or reduce subscriptions in case of over-subscription.

That the committee shall cause the sale of said \$. of first mortgage bonds to be underwritten at per cent. of their par, and members of the committee may become underwriters.

That the \$. of common stock to be sold or used by

the reorganization committee as aforesaid, shall, under the direction of the committee, be offered for subscription to the depositing stockholders of the Company and of the Company, at per cent. of its par; and each depositing stockholder shall have the right to subscribe at the time of the deposit of his stock for such an amount of said new common stock as he may desire, subject to the right of the committee to reject or reduce subscriptions in case of over-subscription.

That the committee is authorized and empowered to use and apply the balance, if there be any, of the second mortgage bonds, stocks, and cash herein provided for, or any part thereof, for the purpose of paying interest or other fixed charges on the property, the expenses of reorganization, the compromise and adjustment of claims against the Company, or the Company, or for such other purposes as it may deem necessary to enable it to carry out the plan of reorganization, and to sell or otherwise dispose of such bonds and stocks upon such terms and conditions, and at such rates as it shall deem proper.

That the committee shall, in the distribution of the new securities, have power to provide for and make such issues of convertible scrip as shall be necessary to properly represent any fractional interest in said new securities.

That the committee is vested with full power and authority to do any and all acts and things necessary and proper in its judgment to be done to carry out this plan, including the power from time to time to make such changes in the same as it may deem expedient or necessary, except that no change shall be made in the plan as to the distribution of securities without the consent of each member of the committee. It shall give notice of any proposed change of this plan by filing a copy thereof with the trust company, and by advertising the substance thereof in one newspaper published in the city of and one published in the city of, at least once

a week for three weeks, and any bondholder or stockholder who shall not dissent from such change and withdraw his bonds or stocks within one week after the completion of such advertisement, shall be deemed to have assented to such change, and shall be in all respects bound thereby. It shall have power to prescribe the form of the new securities and certificates of stock. It may construe the foregoing plan of reorganization, and its construction of the same shall be final, and it may supply defects and omissions in said plan necessary in its opinion to carry it out properly and effectively, and it shall be the judge of such necessity. It shall have power to add from time to time to the number of its members, and to fill any vacancy occasioned by death, resignation, or otherwise. It may act by a majority of the members either at a regular or special meeting convened on notice by its chairman, or by writing signed by such majority, without a formal meeting. It may in its discretion extend any time fixed or limited for the deposit of bonds or stocks, or the payment of subscriptions, or both, but such action shall not be taken, nor shall anything in this agreement contained be taken, to confer or establish any right or privilege upon or in favor of any other non-assenting bondholder or stockholder. If necessary, in its judgment, it may provide funds for the purpose of carrying this agreement into effect by means of loans on such terms as it may deem proper, and pledge as security therefor, all or any part of the bonds or stocks deposited hereunder, or the new securities to be issued therefor.

That the committee assume no responsibility for the execution of the above plan, or any part thereof. The members, however, undertake in good faith to execute the same. They shall not be personally liable in any case for the acts of each other, nor for their own, except in the case of a wilful malfeasance or of gross negligence, nor shall they be personally liable for the acts of their agents or employees. They or any of them may become pecuniarily interested in any of the property or matters which are the subject of this agreement, and they shall be

allowed their expenses for counsel fees and otherwise, and a reasonable compensation for their services. Any member may at any time resign by notice in writing to the other members.

That if, by reason of legal or other objections, any of the provisions of this agreement cannot be strictly performed by the committee, then it shall conform as nearly as may be to such provisions, and the committee shall within one year after the organization of the new company file its accounts with the board of directors of the same. Such accounts shall be binding and conclusive upon all parties to this agreement. The assent or approval of the committee, or a majority thereof, shall be sufficient authority to the Trust Company for whatever may be done by it in the premises, including the delivery or payment to or upon the order of the committee of the bonds or stocks deposited or cash contributed hereunder.

That the deposit of bonds or stocks and the receipt of a certificate issued therefor shall have the same effect as if the holder of such certificate had actually subscribed to this agreement.

In witness whereof, the said parties have hereunder set their names, the day and year first above written.

.....

Committee.

§193. Corporation Contract. Guaranty.

For value received, the Company hereby guarantees to, the holder hereof, payment of interest on the within bond of the Company, and also the payment of the principal thereof when the same becomes due and payable according to the tenor thereof.

In witness whereof, the Company has caused these presents to be subscribed by its president, and its

corporate seal to be affixed and attached by its secretary, by express authority of its board of directors, this day of, 19....

§194. Corporation Contract. Option in Stock.

This agreement, made and entered into by and between of, party of the first part, and of, party of the second part, on this day of, A. D. 19....

Whereas, the party of the second part has purchased shares of stock of the Company for the price of dollars of said party of the first part, witnesseth:

That in consideration of said sale, and in consideration of one dollar, the receipt whereof is hereby acknowledged by said party of the first part, the said party of the first part agrees that if at the expiration of years from date, the said party of the second part desires to sell said stock at the price paid by him therefor, the said party of the first part hereby covenants and agrees to purchase said stock and pay to said party of the second part the amount paid by said party of the second part therefor, together with interest thereon at the rate of per cent. per annum, from date until paid.

In witness whereof, the parties have hereunto set their hands and seals this day of, A. D. 19...

§195. Electric Service Contract. Electric Light.

I request the Electric Light Company of to make connection and serve me with electric current for lighting in my residence at subject to the terms and conditions endorsed hereon and made a part hereof: And for the said service I agree to promptly pay

bills rendered according to the Company's Residence Rates and Classification, viz.:

For the first units used in any month, per unit, and for all units additional in the same month, per unit; subject to a discount of if the bill is paid on or before the Company's discount date as noted upon the bill; provided, however, that if the bill by meter in any one month shall be less than gross, then bill for is to be rendered and paid, subject to discount for prompt payment; and further provided, that the Classification of my said residence may be changed in accordance with the Company's rule if the residence is altered or added to.

And to be responsible for the service, and for such equipment as the Company may furnish for my use, until days after notice in writing is by me mailed or delivered to the Company's office of the withdrawal of this request.

Accepted for the Co.

Signed.....

.....

Special Agent.

Security.....

TERMS AND CONDITIONS REFERRED TO IN AND MADE A PART OF THIS APPLICATION FOR SERVICE.

I. The term "The Company" herein used refers to the Electric Light Company of; the term "The Customer" refers to the applicant for service, and the term "The Premises" refers to the premises for which service is requested.

II. The Company will furnish service wires to the building line, or, at its own option, to the outer wall of the house, but it shall not be required to furnish wires, service pipes or any equipment within the premises other than meters or lamps as herein set

forth. The service wires, meters and lamps and any other appliances which the Company may choose to furnish shall remain the property of the Company.

III. The Customer agrees to maintain his wires and equipment in the condition required by the insurance and municipal authorities having jurisdiction; and so to use the said equipment as not to disturb the Company's service to other customers; it being agreed that although the service furnished is particularly for lighting, the customer may use small motor fans, domestic flatirons and similar appliances adapted for use on lighting circuits; but the Customer shall not use power motors, arc lamps or other appliances taking large current or likely to cause disturbances on the circuits, without written consent first given by the Company.

IV. The Company shall have the right of access at all reasonable times to all of its property installed on the premises.

V. It is expressly agreed and understood that the Company does not undertake to furnish continuous service, nor shall it be liable for damage resulting from the use of electric current nor from the Company's appliances on the premises.

VI. The service is to be metered and bills rendered monthly as nearly as may be. For the purpose of this agreement the term between the regular meter reading of this Company shall be considered to be a month.

VII. The Company will loan to the Customer for his use in the premises carbon filament lamps of its standard type, and renewals thereof as required. The Customer agrees at the termination of the service to return all lamps loaned to him or to pay for lamps broken, lost, or not returned by him.

VIII. The Customer and the Company shall each have the right to terminate the service by giving days' written notice, or to terminate it summarily if the other party shall fail or refuse to conform to the conditions hereof.

§196. Employment Contract. Offer.

(Fairbairn v. Houghton, 139 Mich. 77.)

"To the Committee of the Board of Directors of the

.....

"I hereby make the following proposition to said committee:

"1st. I will take charge of the business of said Company at a compensation of \$..... per year, including office rent and clerk hire.

"2nd. I will furnish money for the running of the business and paying up of the outstanding accounts less stockholders' notes which are to run one year, said sum not to exceed \$..... and the sum due (to wit) \$.....

"3rd. I will require a mortgage upon the real and personal property of said Company to secure such sum as he (I) may advance for the purpose of said business.

"4th. The office furniture is to become the property of

.....

"5th. That this agreement is to take effect from

.....,

....."

See Text, § 40.

§197. Employment Contract.

This agreement, made this day of 19....., between of, of the first part, and of, of the second part, witnesseth, that the said agrees faithfully and diligently to serve the said as (*Insert name of position*), in the (*Insert store, factory or otherwise*) of the said at for the period of from and after the day of next, for the sum of dollars per..... In consideration of which service so to be performed, the said agrees to pay the said the sum of per month, (payable as follows:

..... on the day of
, and on the
 day of each month following, during said term, and at the
 expiration thereof, the balance of such sum as has not then been
 already paid).

And it is understood and agreed that the death of either of
 said parties occurring prior to the expiration of said term of....
 shall terminate this agreement.

In witness whereof the said parties have hereunto set their
 hands this day of,
 A. D. 19.....

See Text, § 40.

§198. Employment Contract.

"Articles of agreement entered into this day
 of, between
 of the City of, and the
 Co. (a corporation of the same place), by its President and
 Secretary, they having been duly authorized by the Board of
 Directors to execute the same, Witnesseth:

"1. That hereby agrees to
 take charge of the business of said Company as its General
 Manager at the compensation of \$...... per year, which
 is to include office rent, clerk hire, and services of the Secretary
 and Treasurer.

"2. That he will furnish money for the prosecution of the
 business of said Company and for paying up the outstanding
 accounts of said Company which are now due, less stockholders'
 notes which are to run one year, and shall not exceed \$......

"3. That the said Company
 shall execute a mortgage of \$...... upon its real estate
 and \$...... upon its personal property to run for one
 year to secure the said for all sums that
 he shall advance for said

"4. That the said parties agree that the office furniture of

said company shall become the property of
as a consideration of his bringing about this agreement.

"5. It is mutually agreed that this agreement shall take effect
from

"In witness whereof, we, the parties hereto, set our hands
and seal this day of,

".....

".....

".....

".....

See Text, § 40.

§199. Employment Contract.

Agreement made between
of of the first part,
and of
of the second part, witnesseth:

That said first part... hereby agrees to hire and employ
said second party in business at
..... in the capacity of
and agrees to pay said second party, during the time that he
shall remain in such employment per week.

Said second party hereby agrees to and with said first part...,
that he will devote his entire time, skill, labor and attention to
said employment, during the time for which he may be employed,
at the wages aforesaid.

It is expressly provided and agreed between the parties hereto,
that said first part... may, at election
..... terminate said employment, at any
time upon payment to said second
party the amount that may be coming to h...., at the rate afore-
said, on the evening of the day of h.... actual discharge.

Of the cause for discharge said first part... shall be the sole
judge.....

Any agreement or arrangement by which the said second party

has been heretofore employed by said first party, is, in further consideration of the premises, cancelled, released and discharged at this date.

Dated the day of, A. D.

..... (L. S.)

..... (L. S.)

See Text, § 40.

§200. Exchange Property Contract. Real Estate.

This Agreement, made and entered into the day of, 19...., between, in the county of, and state of, party of the first part, and, of the same place, party of the second part, witnesseth: The said party of the first part, in consideration of the premises and of one dollar duly paid by the party of the second part, the receipt whereof is hereby acknowledged, and also in consideration of the conveyance of the property hereinafter mentioned, belonging to the said party of the second part, doth hereby agree on his part; to sell, grant, and convey unto the said party of the second part (*here describe premises*). The purchase price of said premises shall be dollars, of which dollars is in mortgage, leaving an equity of dollars.

And the said party of the second part, in consideration of the premises and of one dollar duly paid by the party of the first part to the said party of the second part, the receipt whereof is hereby acknowledged, and in exchange of and for the property and consideration first above mentioned, doth likewise agree on his part to sell, grant, and convey unto the said party of the first part (*here describe premises*). The purchase price of said last-mentioned premises shall be dollars, of which dollars is in mortgage, leaving an equity of dollars. The difference between the values of the respective premises, over and above incumbrances, being dollars, shall be paid by the party of the part, as follows:

The parties to these presents mutually agree to execute, acknowledge, and deliver, each to the other, or to their assigns, each at their own proper cost and expense, a proper warranty deed or deeds for the conveying and assuring, each to the other, the fee simple of the property of each, above described, free from all incumbrances, of any name or nature whatever (*if any exceptions, state them here*), and which deeds shall be delivered and exchanged on the day of, 19...., at o'clock, in the noon of that day, at the office of, No. street, in the city of

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the sum of dollars, as fixed, settled, agreed, and liquidated damages, and not as a penalty, to be paid by the party failing to complete on his part, and which said sum shall constitute a specific lien upon the premises of said party so failing to complete.

And the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered in the presence of

(*Signatures and Seals.*)

See Text, §41.

§201. Gas Company Contract. Application.

..... Gas Company.

The subscriber requests the Gas Company to supply Gas at the premises No. floor occupied as a and in consideration thereof promises to take such gas only through a meter supplied by the Company, and placed in said premises; to

pay said Company in monthly payments pursuant to the rules and at the price established by the City Ordinance under which gas is supplied, for all gas supplied said premises from above date as indicated by such meter, or otherwise ascertained; also to be responsible for all gas consumed on the said premises until forty-eight hours after written notice has been duly given at the office of the Company to discontinue the supply of gas; and hereby agrees to be bound by all of the regulations of the.....
.....Gas Company, including the following:

It is further agreed that the duly authorized agents of the said Company shall have free access to the meter and its connections at all reasonable hours, and for any purpose, and may remove the same, and may also, upon subscriber's failure to comply with any of the rules of the Company, sever the connections with the service pipe, and discontinue the supply.

It is expressly agreed that the service pipe and any extension thereof, the meter, meter connections, and any fuel supply or other pipe at any time placed in said premises by or at the expense of the Gas Company or its predecessors shall belong to it, and be subject to removal only by it or its successors.

The subscriber will deposit with the Company from time to time such sums of money as may be required by its proper officer or agent, or will obtain and renew a sufficient guarantee and surety, as continuing security for the performance of the obligations of the subscriber to the Company.

Receipt of Copy of this Contract is hereby acknowledged.

Subscriber,

No.

Property owned by

I hereby guarantee the payment of all bills for gas furnished on this application, and agree to pay same when due without notice, and I guarantee the faithful performance of all the provisions of the within application by the subscriber until notice to the contrary in writing is given by me at the main office of the Company in; and do further agree that in case

of my failure to comply with this agreement the duly authorized agents of the Company may discontinue the supply of gas to any or all premises supplied for me or by reason of my contract. Value received. Notice of acceptance is hereby waived.

Guarantor

Street and No.

(Date the last day and year on face of application)

§202. Guaranty Contract. To Extend Credit.

Whereas, hereinafter known as the creditor, agrees to supply from time to time to hereinafter known as the debtor, at his request, goods and merchandise on credit, not at any time to exceed altogether in value, at trade prices, the sum of dollars, which the said creditor has consented to do, on having the understanding and agreement hereinafter more specifically entered into as follows:

This agreement made this day of, 19.... between the creditor, and debtor, and, guarantor.

Now these presents witness that the said creditor in consideration of the agreement on the part as well of the said debtor as of the said guarantor hereinafter expressed, hereby agrees to furnish and supply the said debtor from time to time with goods and merchandise, upon the usual terms of credit in his trade, but the amount so supplied shall never exceed, at any time, in value, at trade prices, the sum of dollars.

The said debtor hereby agrees to duly pay the said creditor when the sum or sums fall due in accordance with the usages of the trade for the goods and merchandise so purchased from time to time.

The said guarantor in consideration of the agreement on the part of the said creditor hereinafter contained, hereby agrees that he will pay the said creditor all and every such sum and sums of money as shall from time to time, or at any time hereafter,

during the continuance of this agreement, become due to him from the said debtor for goods and merchandise to be purchased and supplied as aforesaid, but not to exceed in amount the sum of dollars.

The said parties further mutually agree, that the guaranty hereby given shall be deemed a continuing guaranty, but the said guarantor shall not at any time be responsible for, or liable to pay to the said creditor, more than one balance which may, for the time being, be due to him from the said debtor, not exceeding altogether the sum of dollars; and that no proceedings whatever shall be taken against the said guarantor for the recovery of such floating sum, or any part thereof, until the expiration of days' notice which shall be given in writing to him or them of default having been made by the said debtor in payment thereof, or some part thereof, and requiring the said guarantor to pay the same.

The parties hereto further distinctly understand that the guarantor reserves the right to terminate this agreement of guaranty at any time, on payment of the amount then due to the creditor either by the said debtor or by the guarantor.

In witness whereof the parties have hereto set their hands and seals the day and year first above written.

In presence of

.....

See Text, § 42.

§203. Guaranty Contract. Fidelity of Employee.

This agreement made and entered into this day of, A. D. 19...., by and between of, hereinafter known as the merchant (*or as the case may be*) and of, hereinafter known as the clerk (*or as the case may be*), and, hereinafter known as the guarantor.

Now witnesseth: That in consideration of the merchant having at said guarantor's request agreed to engage said clerk

in the trade or business or profession (*or as the case may be*) in the trade or business of now carried on by said merchant at, the said guarantor hereby undertakes to guarantee and indemnify the said merchant to the extent of dollars; but no further against all loss or damage said merchant may directly or indirectly sustain or incur through the misconduct, negligence, or disobedience of the said whilst acting and continuing to be employed by the said merchant in said capacity. This guaranty is to be within the limits aforesaid a continuing guaranty and to remain in force for a period of years should the said continue without intermission so long in said merchant's service and employment but not otherwise, notwithstanding any change or changes that may from time to time take place in the constitution of the firm entitling the guarantor but for this provision to revoke this guaranty.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

See Text, § 42.

§204. Guaranty Contract. Fidelity Clause.

Whereas, the above named hath taken the above bounden into his service, to be one of his clerks, to collect, receive, and get in money for him, and to do all other things in his power, incident to the business of a clerk. Now, the Condition of this obligation is such, that if the said do not or shall not at all times hereafter, during so long as he, the said shall be employed in the service of the said as his clerk, well, faithfully, and truly, serve the said his master, without consuming, wasting, embezzling, losing, mis-spending, misapplying, or unlawfully making away with any of the moneys, goods, chattels, wares, merchandise or effects whatsoever of the said his master, or of any other person or persons whatsoever, (for

which the said, his heirs, executors, or administrators, shall or may by any law, custom, or usage whatsoever, be in any wise answerable,) which shall be committed to his, the said care, charge, custody, or keeping, by reason of his being clerk as aforesaid, and if the said shall at any time, during the time of his being clerk as aforesaid to the said, neglect or refuse to account with him, the said weekly, or oftener, if thereunto required by the said by reasonable notice in writing, under his hand for that purpose to be given to or left with him, the said at his house or usual place of abode; then if the said or (the surety) or either of them, or their, or either of their heirs, executors, or administrators, after due notice thereof shall make good and sufficient recompense, satisfaction and payment unto the said, his executors, or administrators, for the said moneys, goods, chattels, wares, merchandise, or effects of him, the said, so lost, wasted, spent or misapplied as aforesaid and also for all such loss, damage, or charge, as he, the said, his executors or administrators, shall suffer or sustain, by reason or means of his, the said neglecting or refusing to account as aforesaid; then this,

See Text, § 42.

§205. Guaranty Contract. Endorsement.

For value received hereby guarantee the payment both of principal and interest on the within note when the same becomes due and payable according to the tenor thereof.

In witness whereof hereunto set hand and seal this day of, A. D. . . .

See Text, § 42.

§206. Insurance Contract. Policy.

Stock Policy

§.....

No.....

FIRE INSURANCE COMPANY

of

In consideration of the stipulations herein named and of....
 Dollars premium, does insure.....
for the term of.....
 from the day of, 190...., at noon,
 to the day of, 190...., at noon
 against all direct loss or damage by fire, except as hereinafter
 provided.

To an amount not exceeding
 dollars, to the following described property while located and
 contained as described herein, and not elsewhere, to-wit:

.....

This company shall not be liable beyond the actual cash
 value of the property at the time any loss or damage occurs, and
 the loss or damage shall be ascertained or estimated according
 to such cash value, with proper deduction for depreciation how-
 ever caused, and shall in no event exceed what it would then
 cost the insured to repair or replace the same with material of
 like kind and quality; said ascertainment or estimate shall be
 made by the insured and this company, or if they differ, then
 by appraisers, as hereinafter provided; and the amount of loss
 or damage having been thus determined, the sum for which this
 company is liable pursuant to this policy shall be payable sixty
 days after due notice, ascertainment, estimate, and satisfactory
 proof of the loss have been received by this company in accord-
 ance with the terms of this policy. It shall be optional, however,

with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by

voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days. Provided, a loss shall occur on the property insured while such breach of condition continues or such breach of condition is the primary or contributory cause of the loss.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion or military or usurped power, or by order of any civil authority, or by theft, or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except at the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes or securities; nor, unless liability is specifically assumed hereon, for loss to

awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of building, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan, or description of property be referred to in this policy it shall be a part of this contract, and a warranty by the insured as to material facts.

In any matter relating to the procuring of this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulation, in consideration of premium for the renewal term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the (*pro rata*) premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon attached or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur, the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire, the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured)

living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company, all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately the value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall be prima facie evidence of the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate, and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance,

whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for re-insurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy, as the same may be written or printed upon, attached, or appended hereto.

"Provisions required by law to be stated in this policy." This policy is in a stock corporation, and is issued under and in pursuance of Sections of the Insurance Law of the State of

This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements, or conditions as may be indorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto, and as

to such provisions and conditions no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions, unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

In witness whereof, this company has executed and attested these presents. This policy shall not be valid until countersigned by the duly authorized Managers of the Company at

.....

.....Secretary.President.

.....Managers.

Countersigned at, this day of
19...

See Text, § 44.

§207. Land Contracts.

(See Real Estate Contracts.)

§208. Lease and Option Contract. Land....

(Kindly furnished by the courtesy of Mr. E. A. Stowe, of the Howell Bar.)

Articles of agreement, made this day of
....., in the year of our Lord one thousand nine
hundred and, between and
..... of, parties of
the first part, and of,
County,, party of the second part, in the manner
following: The said parties of the first part, in consideration
of the sum of dollars cash, to be to them
duly paid, hereby lease unto the said party of the second part,
for the period of years from and after this date,
all that certain piece or parcel of land lying and being situated
in the of, county of,
and State of, and more particularly known and
described as follows:

for the said sum of dollars, which the said party of the second part agrees to pay to the parties of the first part as a rental therefor as follows: on or before the first day of, A. D., and the same amount on or before the first day of, annually thereafter, (unless reduced as herein provided) until said sum of Dollars, is fully paid. Provided, however, that said second party has a right to purchase the above described land for the sum of dollars and all rents, insurance and taxes due hereon at the end of any annual term of this lease; and for the purpose of keeping this option effective, said second party further agrees to pay said first parties dollars or more at the time and under the conditions of paying rent herein.

It is further agreed by the parties hereto that any moneys paid hereon, to keep the option to purchase effective, shall apply on the purchase price herein agreed upon and every dollars so paid, shall reduce the annual rental, herein mentioned, dollars.

Said party of the second part also agrees to pay, as a further rental all taxes and assessments that shall be taxed or assessed on said premises from the date hereof during the continuance of this lease and keep the buildings upon the lands above contracted for, insured against loss and damage by fire and cyclone, by insurers, and in amount approved by parties of the first part, and assign the policy and certificates thereof to the said parties of the first part, as security for the payments herein provided. And said parties of the first part, on receiving such payments at the time and in the manner above mentioned, in the option herein, shall at their own proper cost and expense, execute and deliver to the said second party of the second part, or to his assigns, a good and sufficient conveyance in fee simple of said described lands, free and clear of and from all liens and incumbrances, except such as may have accrued thereon, subsequent to the date

hereof, by or through the acts or negligence of the said party of the second part or his assigns.

Said party of the second part further covenants and agrees that he will not assign or transfer this lease or sublet said premises without the written assent of the said parties of the first part hereto.

It is mutually agreed between said parties that the said party of the second part shall have possession of the said premises on the first day of, A. D., and that he shall keep the same in as good condition as they are at the date hereof, until this agreement is terminated; and if the said party of the second part shall fail to perform the provisions of this lease and agreement, or any part of the same, said parties of the first part shall, immediately after such failure, have the right to declare the same void, and retain whatever may have been paid on the option herein and all improvements that may have been made on said premises, and may consider and treat the said party of the second part as their tenant holding over without permission, and may take immediate possession of the premises, and remove the party of the second part therefrom.

And it is agreed that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered

in presence of

.....

.....

..... (Seal)

..... (Seal)

..... (Seal)

..... (Seal)

§209. Manufacturing Contract—General Form.

This agreement, made and entered into this day of , A. D. 19...., by and between of , hereinafter spoken of as the manufacturer, and of , hereinafter spoken of as the jobber, witnesseth:

That in consideration of the agreements and promises hereinafter specified, the said manufacturer shall, at his own cost and expense, make, construct and manufacture , in accordance with the designs, plans and specifications hereunto attached and made part hereof (*or in accordance with the sample, marked*) and that he shall use material of the highest grade in the construction of said and the workmanship shall be of the best quality, and further he shall deliver , unto said jobber at , freight prepaid months from date.

That in consideration said jobber shall pay said manufacturer for said at the rate of dollars per upon delivery.

In witness whereof, the parties hereunto have set their hands and seal this day of , A. D. 19....

§210. Manufacturing Contracts. Engines, Boats, Machines.

THIS AGREEMENT, made this.....day of....., 19...., between.....and.....(doing business in the city of....., under the firm name of). , of the first part, and , of of the second part.

WITNESSETH, that the parties of the first part, in consideration of the agreements herein made by the parties of the second part, agree, with the parties of the second part,

1. That they will construct, build, and complete, for the said parties of the second part, a.....of the dimensions and materials mentioned in the specification hereunto annexed, and in all particulars conforming to the said specification and to the direc-

tions which may be given by the superintendent of such..... herein named, for the sum or price of.....dollars, to be paid therefor as hereinafter mentioned; the said.....to be.....on or before the.....day of.....next, and so soon as.....to be placed at the disposal and under the direction of the said superintendent, at,, and thereafter to be fully completed as soon as the said superintendent shall require.

2. That they will furnish all the materials for the said..... according to the said specification, excepting only such as by the express terms of the said specification are to be furnished by the owners, the parties of the second part, the whole to be built and constructed of materials of the best quality, and in the best and most workmanlike manner; and, in every particular which is not specifically named and provided for in the said annexed specification, the said.....shall be built and constructed of such materials, and in such proportions of each, and in such manner, in every respect, as the said superintendent may direct.

3. The parties of the second part, upon condition of the true and faithful performance of all things herein agreed by the parties of the first part to be done and performed, do hereby agree to pay to the said parties of the first part, for the building of the said....., the said sum of.....dollars by installments as the materials therefor are delivered and the work progresses; the first payment to be made when the.....is laid, and the other payments at the end of every month successively thereafter, and the amount of such payments respectively to be in the same proportion to the whole amount to be paid, which the work done and materials delivered shall bear to the whole work and materials required for the full performance of this agreement by the parties of the first part.

4. And it is hereby mutually agreed, that the above-named shall have the superintendence and direction of the building and construction of the said....., as the superintendent herein above and in the said specification named.

IN WITNESS WHEREOF, the said parties hereto have hereunto

set their respective hands and seals the day and year first above written.

See Text, § 47.

§211. Manufacturing Contract. Patent Articles.

(Raymond v. White, 119 Mich. 438.)

"Articles of agreement made and concluded this day of, A. D., by and between, of township, in the county of and State of, party of the first part, and and, of, county and state aforesaid, parties of the second part, witnesseth:

"1. In consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, and the further considerations hereinafter named, the party of the first part agrees as follows: To surrender all claims under and by virtue of a certain contract between the above-named parties, dated the day of, A. D.; to turn over to said second parties all right, title, and interest in and to all inventions and devices heretofore invented by him, and to sign and execute proper and legal applications for patents on the same, and assignments thereof to said second parties, except as to such as are already so disposed of; to continue to use his best talent, and continuously exert himself to the best of his ability, to invent further improvements thereon and other analogous devices, which said devices and improvements, when so invented, he will in like manner make, sign, and execute applications for patents thereon, and also in like manner assign the same to said second parties.

"2. In further consideration whereof, the second parties agree to pay the said first party the sum of (.....) each and every week during the continuance of this contract, payable weekly. Said second parties further agree to manufacture, or cause to be manufactured, either by themselves or others, such of said devices already acquired or to be acquired by them as they may deem advisable or profitable;

and this contract shall continue so long as such manufacture shall embody any device covered by any patent so obtained and assigned, or to be obtained and assigned.

"3. Said second parties further agree that, in event of their effecting a sale of said patents or a license under the same, their assigns or licensees shall enter in a good and sufficient contract to carry out this contract with said first party.

"4. It is further mutually agreed that in the event said second parties or their assigns should altogether cease and discontinue said manufacture, and desire to discontinue the services of said first party and the payment of \$. per week, they may do so by proper written notice, and assigning, by proper legal writing, a one-third interest in all patents on said devices issued or to be issued to said first party, and assigned by him as aforesaid; but it is expressly understood that no such discontinuance shall occur so long as any device or devices are manufactured under said patents as aforesaid.

"5. It is also further mutually agreed that, in the event of the death or disability of said first party, said payment of \$. per week shall be continued and paid to his wife,, or such other beneficiary as said first party may direct, subject to like conditions as to sale or discontinuance as aforesaid.

"
"

"In presence of

"
"

"To

"Sir: Please take notice that we have decided to cease and discontinue, and have ceased and discontinued, the manufacture and causing the manufacture of and inventions and devices under the contract between you and ourselves of date,, and hereby notify you that we have discontinued your services provided for in said contract, and, to that end, herewith hand you assignments, executed by the proper persons, of an undivided one-third interest

in all patents which have been issued to us or our assigns under the terms of said contract.

“

“

See Text, § 47.

§212. Manufacturing Contract. Lumber.

(Sample, et al. v. Pickard, et al., 74 Mich. 417.)

“Memorandum of agreement made this day of
....., 19...., between,
constituting the firm of, of,
....., parties of the first part, and
constituting the firm of, of,
....., witnesseth:

“Whereas, said first parties own about million
feet, board measure, of white pine saw-logs, now in
river, and its tributaries, marked; and
whereas, said second parties own a mill in; Now,
therefore, it is agreed said first parties turn over to said second
parties the above-named logs, delivered in the
boom, and said second parties shall convert the same into lum-
ber, dock and sell the lumber manufactured therefrom in good
and workman-like manner, so as to get the greatest return there-
from, shall pay boomage, inspection, the insurance thereon, and
guarantee the collection of paper received for said lumber. The
proceeds of said lumber shall be divided between said parties,
as follows: The amount paid for boomage, inspection, and
insurance shall first be deducted from said proceeds, and first
party shall receive dollars and cents
(\$.....) per thousand feet for shipping culls,
for common, and dollars and cents for uppers;
and said second parties shall receive dollars and
cents for selling, sawing, and guaranteeing sale:

“Provided, always, that if the net proceeds shall not be suf-
ficient, or shall be more than sufficient, to pay the said parties

the amount due mentioned, they shall receive in the same proportion that said amounts bear to the amount of said net proceeds. And it is expressly agreed that said first parties shall take the mill-culls or non-shipping lumber manufactured from said logs, and shall pay unto said second parties dollars and cents per M. feet for sawing the same.

"And whereas, said second parties have given to said first parties four promissory notes for dollars each, payable, respectively, in and months from this day: Now, therefore, it is agreed that the said second parties shall retain the said first parties' proportion of the net proceeds of said lumber until they shall have retained the said sum of dollars. And it is further agreed that the interest shall be adjusted between the said parties at per cent. per annum; that is to say, if the said second parties shall pay any of said notes before receiving sufficient funds from said first parties' proportion of the net proceeds of lumber sales to meet the same, they shall charge said first parties interest until sufficient funds shall have been received; and, if said second parties shall receive funds from said first parties' proportion of net proceeds before the maturing of said notes, they shall pay interest thereon to the said first parties until the maturing of said notes.

In testimony whereof the parties have hereto set their firm names.

In presence of

See Text, § 47.

§213. Manufacturing Contract. Lumber.

(Hersey v. Huron Salt & Lumber Mfg. Co., 27 Mich. 489.)

"Agreement between and
This agreement, made this day of,
A. D., between, of,
parties of the first part, and the,
....., parties of the second part,
witnesseth:

"The first parties hereby sell and agree to sell to the second party all the logs now cut and banked on the river, in town north, range west, and marked, and also agree to sell and deliver to the second party all the logs they shall cut and bank as aforesaid, during the present winter, to be marked '.....'.

"The above logs have been cut and are to be cut on lands bought by the first parties of, of, and now held under contract of purchase.

"The first parties hereby further sell and deliver to the second parties all the logs now on the bank and marked '....', being all the logs so marked and cut by &, on the river, and agree to sell and deliver to the second parties all the logs that shall be cut on the river this winter by said &, and all the logs to be cut shall be marked '.....'.

"The first parties further hereby sell to the second parties all the logs now cut and banked on the river, in town north, of range east, by, and marked '.....', and agree to sell and deliver to the second parties all the logs that shall be cut this winter by said in the last mentioned town, the logs so to be cut to be marked '.....'.

"The first parties further agree that all the said logs shall be of the usual lengths for making pine lumber, shall be well manufactured, and shall scale at least feet, and they guarantee that all said logs cut and to be cut shall make lumber that will run at least per cent of the three upper qualities; that as early in the spring of this year as the water will permit, they will run to the boom and deliver in the boom of the mill of the second party, as fast as they are wanted for sawing, at least feet of the quality above mentioned.

"It is mutually understood and agreed that the undivided one-half of the logs now cut shall be and become the absolute prop-

erty of the second party when this contract is signed, and that the undivided one-half of the said logs to be cut and banked shall be and become the absolute property of the second party as and when the same are banked and marked as aforesaid; and that the second party shall have the exclusive possession and right of possession of and lien on all said logs cut and to be cut and banked, and of the lumber made therefrom, until said lumber is shipped, as hereinafter provided; and that neither party will sell, use, dispose of, mortgage, pledge, or in any manner incumber said logs or any part thereof, or contract so to do, except in the manner in this contract mentioned, and that from the purchase price, as hereinafter mentioned, there shall be deducted, to be paid to the second parties, or retained by them out of the proceeds of all the lumber, cents per thousand feet for each one per cent. that all of said logs shall fall short of the quality hereinbefore mentioned and guaranteed; and there shall be paid to the first parties, in addition to a thousand, cents per thousand feet for every one per cent. that all said logs shall exceed the quality above guaranteed.

“The second parties agree to take said logs at their said mill boom, and manufacture the same into lumber in a workmanlike manner, and so as to be of the most profit to both parties, to pile said lumber on their mill dock in a good and workmanlike manner and convenient for shipment.

“They further agree to ship all the lumber made from said logs as fast as practicable to and there pile and keep the same for sale in the most economical manner, the lumber to be shipped in in the name of the second parties: Provided, That sales of lumber may be made from the yard or float, as may be the most profitable.

“The second parties further agree to pay to the first parties for one-half the logs above sold and agreed to be delivered, dollars per thousand feet, with the addition or deduction for variation in quality, as above mentioned; and as said second

parties have made certain advances on said logs, and more advances are required to enable the first parties to carry out their part of this agreement, the second parties hereby agree to advance to the first parties, from time to time as required by them for the purpose of getting out and delivering said logs in said mill boom, for payment on the said land contracted from said, on paying said any lien he may have on said logs by his said land contract, or permission given to cut logs: Provided, The advances hereinafter to be made shall not exceed in all the sum of dollars on feet of logs to be hereinafter put in the river, or in that proportion as fast as said logs are put in.

"It is further understood and agreed that when said lumber shall reach, the first parties may and shall have the right to dispose of their interest in the lumber at, or any part thereof, subject to the lien thereon of the second party, which is hereby given for the fulfillment of this contract, saw bill, advance and liabilities incurred by or for rents or other acts or expenses to carry out the manufacture, shipment or sale of the lumber under this contract, and they accounting and paying over to said second parties any sum found due them on final settlement under this contract. It is further mutually agreed that the lumber from said logs shall be inspected and measured as and when shipped, and the inspection bills shall be the basis of settlement, and binding and conclusive upon both parties, both as to quality and quantity.

"The proceeds of the sales of said lumber shall be disposed of as follows: First shall be deducted the inspection, freight, insurance, dockage, commissions and other charges actually and necessarily incurred and paid in the shipping and selling of said lumber. Then there shall be paid to the second parties all advances heretofore made, or that shall be made by the second parties, with ten per cent. interest from the time the same were made respectively to the time of settlement. Then there shall be paid to the first parties dollars per thou-

sand on one-half of said lumber, which the addition to or deduction from the sum provided for above in case of variation from of the three upper qualities. Then there shall be paid to the second parties the sum of dollars per thousand feet on one-half of the lumber sawed, for saw bill, and the balance of the proceeds, if any, shall be divided equally between the parties, share and share alike: Provided, That if there shall not be enough of the proceeds to make the payments above specified, then the deficiency shall come out of the payment for one-half of the logs and payment for saw bill in proportion to the sum above mentioned. In witness whereof the parties have hereunto set their hands the day and year first above written."

See Text, § 47.

§214. Manufacturing Contract. Lease of Machinery.

(Clark v. Needham, 125 Mich. 86.)

"This agreement, entered into this day of, between the Co., of,, party of the first part, and of,, parties of the second part, witnesseth: The first party, in consideration of, receipt of which is hereby acknowledged, and other valuable considerations, received to its full satisfaction of the parties of the second part, do... hereby lease and let to the said second parties, their heirs, executors, and assigns, all the machinery of every name and nature now controlled by or belonging to the party of the first part by virtue of a lease from the parties of the second part of even date herewith, situated in the buildings of the parties of the second part at,, or elsewhere, used by them or others for the manufacture of or, for the term of from and after date hereof, with the right in the second parties to extend said lease for one year at a time until the expiration of five years, for the purpose of manufacturing anything whatever, except; it being the intention hereof to permit the parties of

the second part, their heirs, executors, or assigns, to use said machinery for any purpose, except the manufacture of said

"This agreement, entered into this day of, between, of, as parties of the first part, and the of, as parties of the second part, witnesseth: The first parties, in consideration of the payments to be made to them as hereinafter stated by the second parties, do hereby lease and let to the said second parties, their heirs, executors, and assigns, all of the machinery of every name and nature now used or belonging to the parties of the first part, in their buildings at, or elsewhere, used by them or others for the manufacture of, for the term of from and after date hereof, with the rights in second parties to extend said time one year at a time until the expiration of years, if the second parties give to first parties days' notice of their intention to extend the time for another year, before the expiration of the current year.

"In consideration of the above and the agreement hereinafter set forth, the second parties agree to pay to the first parties the sum of dollars per year, payable dollars in cash, and dollars each month in advance.

"As a part consideration of the above, and the payment of the sum aforesaid by the second parties, the first parties agree and do hereby bind themselves not to manufacture or sell, or in any way engage in the manufacture or sale of, said or during the continuance of this lease, except that they may sell to and manufacture for the of for their own use."

§215. Marriage Contract.

This indenture of three parts, made, between, of, of the first part, of, of, daughter of, of the second part, and, of, and, of, of the third part, witnesseth: That whereas, the said is seized in fee, of and in, certain lands and tenements, with their appurtenances, situate, lying, and being (*give the town, county or state*). And whereas, a marriage is shortly intended to be solemnized between the said and, with whom the said is to have and receive dollars in money, over and besides the lands, above mentioned, as and for her marriage portion: Now, therefore, it is covenanted and agreed, by and between the said parties to those presents, as follows: *First*, the said for himself, his heirs, executors and administrators, doth covenant and agree, to and with the said and their heirs and assigns, that they, the said and, his intended wife, in case the said intended marriage shall be solemnized, by some good and sufficient conveyance, or conveyances, will settle and assure the aforesaid lands and tenements, with the appurtenances, whereof she, the said, is seized as aforesaid, on and to the said and, to the use and behoof of the said during the term of his natural life; and from and after the decease of the said then to the use and behoof of the said his intended wife, for and during the term of her natural life, and from and after her decease, then, to the use and behoof of the heirs of the body of the said, by the said lawfully to be begotten; and on the default of such issue, then to the use and behoof of the said

her heirs and assigns forever, and to and for no other use, intent or purpose, whatsoever.

And, *secondly*, for as much as the said is not at present seized, or possessed, of any estate sufficient to make a jointure for the said, equivalent to her fortune, the said, doth for himself, his heirs, executors, and administrators, covenant, grant and agree, to and with the said and, their heirs and assigns, that in case the said intended marriage shall take effect, he, the said, shall and will, by his last will and testament, in writing or otherwise, give and assure unto the said the sum of dollars, of lawful money of the United States, to be by her received and taken, to her own proper use and benefit, in case she shall survive the said

In witness whereof, the said parties have hereunto set their hands and seals, the day and year above written.

Sealed, signed and delivered,
in presence of

.....
..... (L. S.)
..... (L. S.)

§216. Marriage Contract. Settlement of an Estate.

This indenture of three parts, made this day of, A. D. 19..., between of, of the first part, of, of the second part, and of, of the third part, witnesseth: That whereas, a marriage is intended to be solemnized between the said parties of the first and third parts, and the said is possessed of certain personal estate, to-wit: The sum of dollars, which is now deposited in the bank, in the

city of, and shares of the capital stock of the company in Now, therefore, in consideration of the premises, and of one dollar paid by the said to the said, the receipt whereof is hereby acknowledged, the said doth hereby assign, transfer and set over, to the said, and his executors and administrators, upon the special trusts and for the uses and purposes following, to wit:

First, That until the solemnization of the said marriage, the said shall pay over to the said, or shall empower her to receive for her own use, all the income, profits and dividends, arising from the said monies and effects, and from any other estate which may be substituted therefor, as is hereinafter provided.

Second, That from and after the solemnization of the said marriage, and during the coverture of the said, the said shall receive and collect the income, profits and dividends, of the said trust moneys and effects, or of any other substituted estate, so often and whenever the same shall be payable; and, after deducting all individual expenses, shall pay over the same, or so much thereof as she shall not direct to be added to the principal for the purpose of accumulation, to the said, upon her sole and separate receipt therefor, and free from the control or interference of her said husband, or any other person whomsoever.

Third, That in case of the decease of the said, after the solemnization of the said marriage, and during the life of her said husband, the said money and effects shall be transferred and paid over by the said trustee, to such person or persons, as she, the said, by an instrument or note in writing, subscribed by her in the presence of at least two competent witnesses, shall order and appoint to receive the same; and in default of her making such appointment, the same shall be transferred and paid to the said; and in case of his decease before the said property shall be actually trans-

ferred and paid over to him, then to such person or persons as would be the legal representatives of the said, by the statute for the distribution of intestate estates.

Fourth, That in the event of the decease of the said, during the lifetime of the said, all the property then held in trust under this indenture, shall be transferred and conveyed back to the said; and until so transferred the trustee shall pay over to her, or empower her to receive, the income, profits and dividends of the same, for her own use.

Fifth, That the said trustee shall have power, with the approbation, or at the request of the said, expressed in writing, to sell and dispose of the said trust estate, or any part of it, and the proceeds to invest in other personal or real estate, according to the written direction of the said; and the estate so purchased shall be had and held by the trustees, upon the same trusts, and for the said uses and purposes as aforesaid.

Sixth, That in case of the decease of the party of the second part, or of his resignation of said trust, he, or his executors or administrators, shall convey, transfer and pay over, the whole of the trust estate then held by him, to such person, or persons, as may be appointed in writing by the party of the first part, to be the trustee, or trustees, under this indenture; and such new trustee, or trustees, shall have all the powers, and shall hold the trust estate subject to all the provisions, herein set forth and expressed; and the receipt of such new trustee, or trustees, for the trust property, shall be a complete acquittance and discharge to the said party of the second part, his executors and administrators; and, in like manner, other new trustees may be appointed from time to time, as occasion may require.

And the said party of the second part doth hereby signify his acceptance of the said moneys and effects, and doth engage to hold and manage the same, upon the trusts, and for the uses herein mentioned.

And the said party of the third part doth hereby signify his assent to the provisions of this indenture, and doth covenant to

and with the said party of the second part, and his successors in the said trust, to permit the said party of the first part, after the solemnization of the said intended marriage, to receive the aforesaid income, profits and dividends, to her sole and separate use, and freely to dispose of the trust estate, by her will, or by her testamentary appointment, and not to interfere with the said trust estate, otherwise than in conformity to the provisions of this indenture.

In witness whereof, the parties have hereunto set their hands and seals this day of, A. D. 19....

§217. Marriage Contract. Settlement.

This agreement, made and entered into this day of, 19...., between, of of the first part, and, of, of the second part, (*add the third party, if necessary,*) witnesseth: That whereas a marriage is about to be had and solemnized between the said parties; and the said party of the first part is desirous of making provision for a fit and proper settlement, to and for the use and benefit of the said, his intended wife; Now, therefore, the said party of the first part doth hereby agree, that if the said marriage shall be had and solemnized as aforesaid, he shall or will, on or before the day of next, assign, transfer, and set over, unto of, by good and sufficient transfers, assignments and conveyances, shares of the capital stock of the railroad company, now owned by and belonging to the said party of the first part; and also the sum of dollars in money; to have and to hold the same unto the said, to and for the sole and separate use and benefit of the said, during the term of her natural life. And it is further agreed between the said parties, that in case the said shall refuse to accept the said trust, then the said shares of stock and money as aforesaid, shall be transferred, assigned and set over, unto such

person as shall be nominated in writing by the said party of the second part, as such trustee, in the place and stead of the said, to be held by him to and for the use and benefit of the said, as foresaid; and that the articles of settlement to be executed in pursuance hereof, shall contain a provision for the appointment of a trustee to fill any vacancy which may transpire, except as above provided, by the nomination in writing of the said party of the second part.

In witness whereof, the parties have hereunto set their hands and seals this day of, A. D. 19.....

§218. Marriage Contract. Separation.

This indenture of three parts, made, by and between, of, of the first part, and, his wife, of the second part, and, of, of the third part, witnesseth: Whereas, divers unhappy disputes and differences have arisen, between the said party of the first part, and his said wife, for which reason they have consented and agreed to live separate and apart from each other during their natural life; Now, therefore, the said party of the first part, in consideration of the premises, and in pursuance thereof, doth hereby covenant, promise and agree, to and with the said, and also to and with his said wife, that he shall and will allow and permit his said wife,, to reside and be in such place and places, and in such family and families, as she may from time to time choose, or think fit to do; and that he shall not, nor will, at any time sue, molest, disturb, or trouble any person whomsoever, for receiving, entertaining or harboring her; and that he will not claim, or demand, any of her money, jewels, plate, clothing, household goods, or furniture, which the said now hath in her power custody, or possession, or which she shall or may at any time hereafter have, or which shall be devised or given to her, or that she may otherwise acquire; and further, that the said party of the first part shall and will well and truly pay, or cause to be paid, unto

the said, for and towards the support and maintenance of his wife, the said, the yearly sum of dollars, free and clear of all charges and deductions whatsoever, for and during her natural life, payable quarterly, at or upon the first day of,,, and, in each and every year during her said natural life; which the said doth agree to take, in full satisfaction for her support and maintenance, and all alimony whatever. And the said, in consideration of the sum of one dollar, to him duly paid by the said, doth covenant and agree, to and with the said party of the first part, to indemnify and bear him harmless, of and from all debts of his said wife,, now contracted, or that may hereafter be contracted by her, or on her account; and if the said party of the first part shall be compelled to pay any such debt or debts, the said hereby agrees to repay the same, on demand, to the said party of the first part, with all damages and loss that he may sustain thereby.

In witness whereof the parties have hereunto set their hands and seals this day of, A. D. 19

§219. Marriage Contract. Trust Provisions.

This agreement, made and entered into, on this day of, A. D. 19 , by and between the following parties,

- hereinafter known as the benefactor,
- hereinafter known as the daughter,
- hereinafter known as the fiancé.
- hereinafter known as the trustee.

Witnesseth: That in contemplation of the intended marriage to be solemnized between the daughter and the fiancé, on the day of, A. D. 19 , the benefactor being desirous of establishing a competency for the aforesaid mentioned daughter and her fiancé. Now, therefore, in consideration of the mutual promises herein contained and the

solemnizing of the aforesaid mentioned marriage, the benefactor hereby does assign, transfer, set over and convey to the aforesaid named trustee, all the moneys, property and effects, described as follows, to wit: to hold the same for the sole benefit and use of his said daughter upon the special trusts hereinafter mentioned, to-wit:

First, that it is hereby made manifest that from and after the solemnization of the said marriage, and during the coverture of the said daughter, the said trustee shall receive and collect the income, profits and dividends, of the said trust moneys and effects, and after deducting all expenses for collecting the same, shall pay over, as often as the same is payable, the sum due or so much thereof as she shall not direct to be added to the principal for the purpose of accumulation, to the said aforesaid daughter, upon her sole and separate receipt therefor, and free from any control or interference of her said husband (now fiancé), or any other person.

Second. That in the event of the death of the said daughter, after the solemnization of the said marriage, and during the life of her said husband, it is clearly understood that said moneys, effects and property shall be transferred and paid over by the trustee, to such person or persons, as the said daughter by an instrument in writing, properly subscribed by two competent witnesses, shall order and direct who shall receive the same, and that in default of her executing such writing, the same shall be transferred and paid over to her said husband, now fiancé.

Third. That the said trustee shall be hereby authorized and empowered with the approbation of said daughter to sell and dispose of the said trust estate, or any part thereof, for the purpose of investing the proceeds in other personal or real property being of a safer and better bearing profit than the property sold, and the estate so purchased shall be had and held by the trustees, upon the same trust and for the same uses and purposes as mentioned aforesaid.

Fourth. That in the event of the death, or resignation of the said trustee, he or his executors or administrators shall be duly

authorized and empowered to convey, transfer and pay over, the whole trust estate then held by him, to such person, or persons, as may be appointed by the benefactor in writing, to be the trustee under the agreement; and such new trustee shall have all the powers, and shall hold the trust estate subject to all the provisions, herein set forth and expressed; and the receipt of such new trustee, for the trust estate, shall be a complete acquittance and discharge of said first incumbent.

Fifth. That the said trustee hereby gives his consent to accept the trust, and hereby acknowledges the receipt of said above described moneys, effects and property.

In witness whereof the parties hereunto have set their hands and seals the day and year first above written.

§220. Marriage Contract. Antenuptial.

This agreement entered into this day of, A. D. 19..., between of the city county of, and state of, party of the first part and of the same place, party of the second part, WITNESSETH: Whereas, marriage between said parties is contemplated; and whereas above stated parties desire that said first party shall pay said second party a sum of money in full satisfaction and discharge of all the right, title, interest, dower and claim for support which said second party will have, by reason of such marriage, and the property of said first party, both during his lifetime and after his decease, except the right to claim support during the lifetime of first party;

Now, therefore, in consideration of the premises and said contemplated marriage, said parties agree that the said first party, upon the delivery of this agreement, shall execute and deliver to said second party his note and mortgage for dollars, payable at the demand of said first party, without interest. If said second party should die before said first party, then the amount of said mortgage shall be dollars, to be paid to the heirs of said second party.

Said second party, in consideration of the premises and of said note and mortgage, the receipt whereof is hereby confessed and acknowledged, hereby releases and forever discharges all the right, title, interest, claim, dower and demand which she will have or be entitled to by reason of such marriage in the property, both real and personal, of said first party, both during his lifetime and after his decease except the right to support during his lifetime; it being the desire of both parties that said second party shall have no interest, claim for support, right of dower, or demand of any kind in or to the property of said first party at any time, except as provided.

In witness whereof the parties hereunto have set their hands and seals this day of, A. D. 19....

See Text, § 27.

§221. Marriage Contract. Antenuptial.

(Pulling v. Durfee, 85 Mich. 34.)

"Agreement, made this day of,
....., between of the first part, and
..... of the second part, both of the
city of,, witnesseth:

"Whereas, the said parties are about to enter into the bonds of matrimony with each other, and the second party is desirous of barring all of her right of dower and all of her right to share in the estate, both real and personal, of the first party, in case she shall survive him:

"Now, therefore, the second party hereby acknowledges the receipt from the first party of the sum of (\$.....) dollars in lieu of all her right of dower and her right to share in the estate, both real and personal, of the first party, in the event of such marriage, and of her surviving the first party; and in consideration of said payment, and of love and affection, the second party hereby agrees to release, and does release, all claim which, upon the death of the first party, she as his widow may have in his estate, whether in right of dower or as her distributive

share in the personalty or otherwise, under the laws of the State.

"The second party makes this agreement for the purpose of substituting this present gift of money in lieu of all the property rights which such marriage, if entered into, may confer upon her under the law.

"In witness whereof both of said parties have hereunto set their hands and seals.

".....
".....

"In the presence of

".....
"....."

In contemplation of a marriage between myself and
....., of, I have already
executed a deed relinquishing all of the rights conferred upon
me by law, in case I should survive him, intending thereby in
case of his death, whether dying intestate or not, to surrender
all rights in his property, which but for said deed would have
been mine. I have also signed a statement that my rights in
the premises have been fully explained to me by,
namely, the income for life on one-third of his real estate, and
an interest in the personal estate, being about one-third thereof;
which interest I understand, in case the said
should die intestate, without at least two children, might vary
from one-third thereof to the whole thereof. I now affirm that
Mr. explained to me that I had no
information of the value in money of the rights I was surren-
dering, and I replied to him, and I repeat now, that the money
value makes no difference in my action. I do not care to know
the value of the estate of the said; it is
the same to me whether it be or
..... dollars. In view of the information that the value of
his estate may be dollars, I repeat and con-
firm my said deed of relinquishment. I sign this statement,

that there may be no question but that I fully understood what I was doing.

“.....
“.....”

Detroit,,

To Whom it May Concern:

“My purpose in having these documents executed by
....., my intended wife, is to avoid delay or embarrassment in the final settlement of my estate, when the time comes to do it, as her legal right of dower would interfere with or prevent a distribution of the property during her life. We discussed the subject fully, and it is understood between us that I expect to provide for her future, consistent with my ability in a financial way, and according to the circumstances and feelings which may obtain through the effects of our married relation. She confides in me entirely about doing for her what is just and proper in consideration of my family, and all the surroundings that would naturally influence my decision as to a satisfactory arrangement of this at present open question.

“.....”

See Text, § 27.

§222. Marriage Contract. Antenuptial.

(Aultman, Miller & Co., v. Pettys, 59 Mich. 484.)

“This agreement made and entered into the day of, in the year of our Lord, between of the township of, in the county of, State of, the party of the first part, and widow of, deceased, of the township aforesaid, party of the second part.

“Witnesseth, that whereas, a marriage is about to be had and solemnized between the said parties, and the said party of the first part is desirous of making and securing provisions for a proper settlement to and for the use and benefit of the said, his intended wife, and her heirs, forever. Now, therefore, the said party of the first part, for

and in consideration of such marriage agreement, and in further consideration of the sum of dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees, to and with the said party of the second part, that in case she shall survive him, his executors, administrators, or assigns, shall, after his death, by a proper deed, convey to the said party of the second part and to her heirs and assigns, forever, in fee simple, the following described tract or parcel of land, situated in the county of, State of, viz:

"But in case the said party of the first part shall survive the said party of the second part, then on and after the death of the said party of the second part, this contract or instrument shall become null and void and of no effect, and the estate and interest, hereby granted, or contemplated to be granted or conveyed, shall revert wholly to the said party of the first part, and shall descend to his heirs, according to the laws of inheritance, in the same manner as if this instrument had never been made.

"And the said party of the second part hereby accepts of said interest in said lands, hereby granted, on the terms and conditions hereinbefore specified, and for the purpose mentioned.

"And it is further mutually covenanted and agreed, by and between the parties hereto, that neither party hereto, during the lifetime of the other party, shall bargain, sell, alien, or convey, or shall incumber by mortgage, lease or otherwise, the said premises, without being joined by the other party in such bargain, sale, alienation, conveyance, or incumbrance, anything herein contained to the contrary notwithstanding.

"In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first above written.

"..... (Seal)

"..... (Seal)

"Signed, sealed and delivered in presence of

"....."

See Text, § 27.

§223. Municipal Contract.

(See Forms, §155.)

§224. Municipal Contract. Light.

(Village of Morrice v. Sutton, 139 Mich. 644.)

"This Indenture made this day of, A. D., between the village council of the village of, county of, state of, for said village of, of the first part and of the same place of the second part.

"Witnesseth, That the said party of the first part together with their successors in office do bargain and contract with the said second party to buy all electric lighting of said party of the second part for a period of years from and after said second party has his electric light plant installed in said village of, which is to be installed within months from the date hereof; and it is further agreed by said party of the second part to furnish said village arc lights, each of candle power, schedule of standard make and to maintain and operate the same for said period of years after said plant is installed as aforesaid at a cost to said village of \$. a year for each arc light aforementioned; the same to be paid monthly in advance by said village to said or his assigns during the continuance of this contract. The light to be furnished as aforesaid shall be kept clean by said second party or his assigns and shall burn from sundown, dark, each night, until o'clock, except Saturday nights said lights shall burn until o'clock and except also moonlight nights. And the same shall be maintained as aforesaid unavoidable accidents excepted. The said council and their successors do hereby grant to said second party and his assigns the right to such use of the streets, alleys, and public grounds in said village of as shall be necessary to enable the said or his assigns to construct and operate

proper works for the supplying of said lights to said village under this contract, and supplying the inhabitants thereof with incandescent lights on any terms that may be agreed upon by said inhabitants and said or his assigns; such grant to continue for the period of years from the date hereof. It is also agreed that said arc lights are to be placed within the corporation limits of said village, and at such points as may be determined by said council; and should said council or their successors require any more lights for said village, the same shall be furnished by said second party or his assigns at the rate aforesaid in consideration of the privileges hereby granted.

"Witness the signature of the parties hereto on the day first above mentioned.

".....,

· "President, and

".....,

"Clerk of the Village of, county,

"....."

"Witnesseth, That the said first parties, for and in consideration of the sum of \$...... to be paid to them by said second parties, as a voluntary aid in the construction of an electric light plant and flouring mill, at the time and in the manner hereinafter stated, do agree to construct substantially after the plans and specifications of the Flour Mill and Machinery Company of,, a copy of which specifications is hereto attached and made a part of this agreement. Said first parties also agree to erect and maintain an electric light plant of sufficient power to furnish current to light the village of with at least arc lights of candle power, also of sufficient power to furnish current for at least incandescent lights if so many be desired by private citizens of said village. Said first parties agree to furnish the village with light under the terms and conditions of a certain contract made on the

day of, with, which contract has been fully assigned to said first parties. Said flouring mill and electric light plant shall be located on some suitable site within the said village of

"The payment of the sum herein stipulated shall be made as follows: When the foundation walls are all completed according to specifications, and the lumber and all other materials for said building are upon said ground the sum of \$.....; when the boiler and engine are upon the ground, the sum of \$....., and at the completion of both the mill and electric light plant in the manner heretofore specified, the sum of \$....., all of which the said second parties agree to pay to said first parties.

*It is further agreed that said first parties shall keep said mill and electric plant insured in the sum of at least \$....., and shall assign said insurance to the amount of \$..... to said second parties as security for the specific performance by first parties of the following undertaking, to-wit: In case said mill and electric plant shall be destroyed by fire in whole or in part and first parties shall not elect to rebuild said mill and electric light plant or to resume operations, then in that event said first parties shall pay back to said second parties the sum of \$....., less the amount of premiums actually paid by said first parties in carrying said insurance. When said first parties have expended the sum of \$..... in premiums in carrying the insurance to the amount above specified then this agreement to assign insurance and return any sum to said second parties in case first parties should not elect to rebuild after a fire, shall become void.

"This agreement shall be binding upon and inure to the benefit of the heirs, representatives, and assigns of the respective parties.

"In Witness Whereof, the respective parties have hereunto

set their hands and seals the year and day first above written in duplicate.

“ (L. S.)
 “ (L. S.)
 “ (L. S.)
 “ (L. S.)
 “ (L. S.)

“In the presence of, as to

“

“Witnesses to and parties of the second part.

“

“”

See Text, § 48.

§225. Option Contract. Offer and Acceptance.

(Beekman v. Fletcher, 48 Mich. 556.)

“It is agreed by and between of the first part, and of the second part, whereby the party of the first part agrees to sell unto the party of the second part all the pine lands owned by him in town, range, in the State of at dollars per acre, it being the undivided half of some thousand acres, and also the other undivided half owned by, of, for dollars per acre, or for such sum as said and said shall agree upon, and it is at the option of said to take all or none, or only, and if he takes only, then the said party of the first part agrees to hold in common and to sell his interest as may be desired, by stumpage or otherwise, to said or others, as shall seem best to both parties; the said to have months to decide if he takes said lands or not, and in consideration of the above the said gives his note for \$....., at days, in part payment of

said, and the balance to be paid within from date, and if he does not take said lands then said is to give said a contract to lumber on said lands the coming winter at \$. for and \$., for white pine, payable first of next; the \$., with interest from time of payment to,, to be in payment for said stumpage. If the said takes the said half, time to be given for payment, with interest at per cent., and in case any unforeseen accident shall hinder the parties from getting off the coming winter sufficient stumpage to meet said note, then said agrees that he will pay to said the difference on or before the of, with interest."

"Dear Sir: In consideration of \$. to me in hand paid by you, and \$., to be paid by you to of,, for me, to apply as the first payment on this purchase, by,, I hereby sell and assign to you my undivided one-half interest in all the pine land owned by me and in town north, range and, in the State of, being my entire interest in said lands, estimated at some acres more or less, the price to be (\$.. . . .) per acre; payments to be \$. down—to as above—and the balance in years from date of your acceptance of this proposition—equal annual payments—with interest at per cent., you to have from this date to examine said lands and accept or reject this proposition, and in case you reject it, the money advanced by you is to be either taken out in stumpage or the money refunded to you by,, as agreed by you with"

"Dear Sir: I beg to notify you that I this day accept your offer of,, as to certain pine lands in

....., and that I have paid the sum of dollars as stipulated in said offer."

"In consideration of dollars this day paid me by to apply on the odd acres of land purchased by him by of, I hereby agree as follows:

"The said shall have the and some odd acres of pine land owned by myself and others, in town north, range and, state of, as shown by the minutes and estimates of the same made in by and of, for said parties, on the following terms:

"About hundred acres, lands, at (\$.....) per acre, and about acres, lands, at same price, both purchases dating from, The tract, acres, to be paid for after deducting the dollars paid last fall, as follows: cash—paid to-day—note for months for dollars and balance, with interest at per cent.

"The tract, acres to be paid for in years from date of purchase, with interest at per cent.

"The remaining odd acres my land said is to have at dollars cents per acre, to be paid for in years, or as fast as the timber is cut off, with interest at per cent. per annum, annually. All of the above to be on land contracts. Each lot is to be conveyed in separate parcels or on separate papers, so the different lots of land may be kept separate, and enable said to cut my last, if he so elects. In case I am unable to get to put in his land at less than dollars per acre—it being under-

stood that it will go in at either or per acre—in that event I agree to put in my acres at dollars, instead of dollars per acre. In case I am unable to get to agree to the foregoing, I am at liberty to return the dollars this day paid me by said within days from, and be released from this agreement.

“The purchase of my acres to date from,”

“It is stipulated and agreed that the amount of land to be sold and conveyed under and by virtue of the contract hereto annexed, dated, acres, being the lands specified in the memorandum hereto attached, examined by, excepting from said memorandum the undivided half of some acres therein included belonging to, known as the lands. There is also included in said contract, to make up the amount of acres, (six several parcels described) it being understood that an undivided one-half of the above acres are to be treated as the lands mentioned in the foregoing contracts, and that the other half are to be treated as the lands of said Said also agrees to give to said, in consideration of the foregoing agreements, the refusal for two years to take all of his, said, right to the lake front easterly of his, said, boom in, for \$....., or take that and the river front for the sum of \$....., and if taken, contracts to date from”

“Memorandum of agreement made this day of,; by and between of,, of the first part, and and, as trustees, and the, parties of the second part, witnesseth:

That whereas the said is the sole owner of certain pine land situated in township (.....) north, of range (.....) and for (.....) east, in the state of, and is also the owner in common with and and, of certain other lands in said towns and ranges.

And whereas, the said and, as such trustee, are the owners of the rights of said, and in and to all the lands so-called.

And, whereas, the said second parties and have caused to be cut from off a portion of such lands as owned solely by said, and also from off a portion of the other lands above named the pine timber therefrom.

A partition of such lands so held in common is desired by the parties, and it is therefore agreed that a partition of such lands be made by three disinterested persons, one to be chosen by said party and one by said second parties, and the two so chosen to elect the third.

That in making such partition, the quantity and quality of the timber and the location of the land is relatively considered.

That the lands so cut upon and over by or said second parties or any persons for them, be set off to the trustees at their value estimated, with the timber heretofore standing, and as if the same were new thereon, as a part of their share of such lands.

That said convey to said all of the lands so owned by him, solely which have been cut over or upon by or said second parties.

That in exchange for the same, the said trustees are to convey to him, said, out of the lands which may be set off to them as aforesaid, lands of equal value, quality, quantity and location considered, to those of said so cut over as aforesaid, estimated with the timber standing thereon, and as if the same had not been cut over. The persons so ap-

pointed to make said partition to determine and designate such lands, also such partition and division to be made at once, and the parties are to release and convey to each other the lands set off to each respectively.

The said also agrees to purchase of said what is known and called the “.....,” being in the front of and adjoining the mill property of said company, and also in front of street, extended in the city of and pay him therefor the sum of dollars in cash, and said company also agrees to pay said in cash the sum of dollars in full settlement of certain harbor dues, claimed to be due to the ‘.....,’ from said lumber company.

“Said Lumber Company and its successors or assigns in the ownership of the mill property are also to have a right of way over what is called “.....” extended in said city to said “.....,” and are to keep that portion of said so-called street which may be used by it, in good, sanitary and clean condition.

Said is to execute and deliver to said Lumber Company the necessary conveyance of said “.....” upon the payment of said dollars, reserving, however, the right to treat with the United States Government for any river front for dock or light-house purposes, with such depth from the river front as it may require, and to receive all compensation made therefor.

All suits commenced by either of said parties against the other, and the suit of said against, are to be discontinued, and any money or property taken in the replevin suits now in the hands or possession of said, which belongs to said second parties, to be returned or applied first to the payment of said sum of dollars for said lake front and harbor dues, and, secondly, upon whatever may be due said upon the mill property

mortgage, and the balance to be returned to said Lumber Company.

A certain drain, extending from the '..... House' across the property of said Lumber Company is owned and is to be kept up by the parties in common.

Said is to transfer and assign to said Lumber Company and does hereby transfer any and all claims which he may have against or other parties for any of the timber cut as aforesaid and hereby releases the said Company from any and all such claims, in consideration of such partition and division made."

See Text, § 49, § 60.

§226. Option Contract.

(Goldberg v. Drake, 145 Mich. 50.)

"Memorandum of agreement made this day of, A. D., between, party of the first part, and, party of the second part, in the manner following: The said party of the first part, in consideration of the sum of \$...... to him duly paid upon the signing of this agreement, hereby agrees to sell unto the said party of the second part all that certain piece or parcel of land situate in the city of, county of, and State of, and more particularly known and described as follows, to-wit: House and premises on street, on the side thereof, the premises being the lot of the intersection of.... and streets.

"The said party of the first part hereby agrees to sell the said premises to the said party of the second part for the sum of \$...... (..... Dollars), and that the said party of the second part may have this option for days. The sum of \$...... paid upon the signing of this agreement to apply upon the sum of \$...... to be paid in full for said premises.

".....

"I hereby agree to the above terms and to pay the balance, or the sum of dollars, within days.

"....."

See Text, § 49.

§227. Option Contract.

(Mier v. Hadden, 148 Mich. 490.)

"Option contract, between, of,, party of the first part, and and, his wife, of township, county,, party of the second part, to-wit.

"In consideration of dollars (\$.....) paid by party of the first part to party of the second part, the receipt of which is hereby acknowledged and in consideration of the agreements hereinafter set out, said second party hereby sells to said first party for the sum of dollars (\$.....) to be paid to said second party as follows: Cash upon possession of land (less amount of liens and encumbrances on the real estate) upon execution to said first party of a warranty deed therefor, the following real estate in county, State of, viz:

"..... (.....) acres off the side of the quarter (.....) of section (.....) of highway and (.....) acres off the side of the quarter (.....) of highway in section (.....) all in township (.....) of range (.....) containing (.....) acres more or less to be more accurately described in deed.

"Party of the second part agrees to furnish abstract showing perfect title to said real estate, which title must be made satisfactory to said first party's attorney, and second party agrees to convey said real estate to party of the first part by deed of general warranty. First party may demand the execution of said

deed at any time within,, from the date hereof; and if second party fails or refuses to execute the same or fails or refuses to perform the stipulations hereof on his part, then first party may by suit enforce the specific performance by second party of this contract, and the execution of a deed for said real estate, or may, at his option, by suit, recover from said second party, with interest and attorney's fees and without relief, whatever damage he may have suffered by reason of any default on the part of said second party.

"First party may refuse to purchase said real estate, and if he does so, shall forfeit and pay to second party with interest and attorney's fees and without relief, the sum of dollars (\$) which shall constitute the only liability of first party for such refusal.

"This contract to be void unless the first party offers performance thereof on his part within said period of
.

"Deed to be made and delivered at the office of, at,

"It is further agreed that the party of the second part reserve the tenant's interest the one-half (.) of the sown in the fall of

"Possession to be given,

"Executed in duplicate this day of,

"

By (Seal)

" (Seal)

" (Seal)

See Text, § 49.

§ 228. Order in Nature of Contract.

(McCormick Machine Co. v. Cusack, 116 Mich. 648.)

. Company's Order Blank.

" Company will ship for the

undersigned, any time before the coming harvest, of their latest improved and consigned to the care of, at; the undersigned agreeing on delivery of the machine to pay the Company \$., in the following manner: To execute approved notes for the sum of \$., payable on the day of,; \$. payable on the day of,; \$. payable on the day of,; \$. allowed on one old, with interest thereon at the rate of per cent. per annum from date,,, next, until due, and per cent. thereafter until paid, and agree to make settlement as above stated upon delivery of machine. The machine to be warranted as per the following warranty, without addition or erasure, a copy of which I have this day received: The machine is warranted to be well made, of good material, and durable with proper care. If, upon one day's trial, the machine should not work well, the purchaser shall give immediate notice to said Company, or their agent, and allow time to send a person to put it in order. If it cannot then be made to work well, the purchaser shall return it at once to the agent of whom he received it, and all cash and notes received in settlement will be refunded. Continuous use of the machine, or use at intervals through harvest season, shall be deemed an acceptance of the machine by the undersigned.

"Dated the day of,

"....."

§229. Partnership Contract.

Articles of agreement, had, made, concluded, and agreed upon this day of, A. D., between of, trader, and of, trader.

First of all, the said and

have agreed, and by these presents do agree, to become co-partners together in the art or trade of and all things thereto belonging, and also, in buying, selling, vending, and retailing all sorts of wares, goods, and commodities belonging to the said trade of which said co-partnership, it is agreed, shall continue from for and during, and unto the full end and term of years, from thence next ensuing, and fully to be complete and ended. And to that end and purpose he the said hath the day of date of these presents, delivered in as stock, the sum of and the said the sum of, to be used, laid out, and employed, in common trade between them, for the management of the said trade of to their utmost benefit and advantage. And it is hereby agreed between the said parties, and the said co-partners, each for himself respectively, and for his own particular part, and for his executors and administrators, doth covenant, promise, and agree, to and with the other of them, his executors and administrators, by these presents, in manner and form following, (that is to say), that they the said copartners shall not nor will, at any time hereafter, use, exercise, or follow the trade of aforesaid, or any other trade whatsoever during the said term, to their private benefit and advantage; but shall and will, from time to time, and at all times, during the said term, (if they shall so long live), do their and each of their best and utmost endeavors, in and by all means possible, to the utmost of their skill and power, for their joint interest, profit, benefit, and advantage, and truly employ, buy, and sell merchandise, with the stock aforesaid, and the increase thereof in the trade of aforesaid without any sinister intentions or fraudulent endeavors whatsoever. And also that they, the said co-partners, shall and will, from time to time, at all times hereafter, during the said term, pay, bear, and discharge, equally between them, the rent of the shop, which they the said co-partners shall rent or hire, for the joint exer-

cising or managing of the trade aforesaid. And that all such gain, profit, and increase, as shall come, grow, or arise, for or by reason of the said trade, or joint business as aforesaid, shall be from time to time, during the said term, equally and proportionately divided between them the said co-partners, share and share alike. And also that all such losses as shall happen in the said joint trade, by bad debts, ill commodities, or otherwise without fraud or covin, shall be paid and borne equally and proportionately between them. And further, it is agreed by and between the said copartners, that there shall be had and kept from time to time, and at all times during the said term and joint business and co-partnership together as aforesaid, perfect, just, and true books of accounts, wherein each of the said co-partners shall duly enter and set down, as well all money by him recieved, paid, expended, and laid out, in and about the management of the said trade, as also all wares, goods, commodities, and merchandise, by them or either of them bought and sold by reason or means or upon account of the said co-partnership, and all others matters and things whatsoever, to the said joint trade, and the management thereof, in any wise belonging or appertaining, which said books shall be used in common between the said co-partners, so that either of them may have free access thereto without any interruption of the other. And also that they the said co-partners, once in, or oftener is need shall require, upon the reasonable request of one of them, shall make, yield, and render, each to the other, or to the executors or administrators of the other, a true, just, and perfect account of all profits and increase, by them or either of them made, and of all losses by them or either of them sustained, and also of all payments, receipts, and disbursements whatsoever, by them or either of them made or received, and of all other things by them or either of them acted, done, or suffered in the said copartnership and joint business as aforesaid; and the same account being so made, shall and will clear, adjust, pay and deliver, each unto the other, at the time of making such account, their equal shares

of the profits so made as aforesaid; and at the end of the said term of or other sooner determination of these presents (be it by the death of one of the said partners or otherwise), they the said copartners, each to the other, or in case of the death of either of them, the surviving party to the executors or administrators of the party deceased, shall and will make a true, just, and final account of all things as aforesaid, and divide the profits aforesaid, and in all things well and truly adjust the same, and that also upon the making of such final account, all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, whether consisting of money, wares, debts, shall be equally parted and divided between them the said copartners, their executors, or administrators, share and share alike.

In witness whereof the said parties have hereunto set their hands and seals this day of, A. D. 19.....

See Text, § 50.

§230. Partnership Contract.

(Edwards v. Symons, 65 Mich. 350.)

"This agreement, made and entered into this day of, A. D., by and between the of, of the one part, and of the same place, of the other part. Witnesseth: that whereas, on the day of, the said parties hereto entered into a partnership under the name and style of the, upon the terms and conditions stated in the articles of copartnership between the said parties, of date the said first day of, A. D.

"And whereas, the said is desirous of purchasing the interest of said in said; and it is agreed between the parties hereto

that the value of said interest of said in said copartnership is the sum of \$.....

"Now, it is agreed that the said copartnership between the said and the said shall continue under the name and style of "The " upon the following terms and conditions:

"First, Said agrees to sell, and the said agrees to purchase, the interest of said in said copartnership for the sum of \$..... which shall be paid by the said to the said Company as follows: \$..... upon the execution of this article; \$..... on or before,; \$..... on or before,; and the balance of said purchase price to be paid as follows: \$..... on the day of each month, commencing,, and continuing on the day of each and every month thereafter until the full amount of said purchase price is paid, with interest upon all sums remaining unpaid at the rate of per cent per annum, semi-annually, said interest payable upon the day of and respectively.

"It is agreed that said shall keep, hold, and retain its title and ownership of the property, stock, and effects of the said until the full and complete performance of the agreements herein contained, as its interest in said copartnership from time to time may appear; it being understood and agreed that the interest of said in said copartnership shall increase, and the interest of said decrease, in proportion to the payments made by said in accordance with the terms and conditions of this contract as hereinbefore stated; that so long as the terms and conditions of this agreement are complied with, and the payments aforesaid are made, all the profits of said business shall belong to said

..... the interest upon said payments hereinbefore provided being treated and taken by said in lieu of its share of the profits of said copartnership.

"It is understood and agreed that said shall have the sole management and control of said business.

"It is further agreed that if the said shall pay the said the sum of \$....., in addition to the \$..... paid upon the execution of this contract, on or before,, with interest upon the amount hereinbefore stated from this date to the time of said payment, then shall be and become the absolute owner of all the right, property, and effects whatsoever of said"

See Text, § 50.

§231. Party Wall Contract.

Whereas, the said is seized and possessed in fee of that certain piece of land situated in city, county of and State of, more particularly described and known as (*insert description*).

The said is seized and possessed in fee of that other piece of land owned and described as follows, to-wit: (*describing it*) and;

Whereas, the said is about to build on his aforesaid lot a building. The easterly (*or as the case may be*) wall whereof it is intended shall be not less than inches thick, and shall rest the one half (*or as the case may be*) its width on the west (*or as the case may be*) margin of said first above described premises, and the other half (*or as the case may be*) its width on the east (*or as the case may be*) margin of the said second above described premises. And:

Now, therefore, the aforesaid parties of the first and second part agree to and with each other as follows:

That said shall have the right, at his own personal charge and expense, to place, erect, keep, and maintain said wall one half its width on the west (*or as the case may be*) margin of the said (*describing the premises*) as aforesaid.

That said, his heirs, executors, administrators, or assigns, may at any time hereafter, whenever he or they may see fit, make connection to said party wall, and use same in the construction of any building. They may erect, on said, so that there and thenceforward said wall shall be and become the division wall between the buildings erected on said, and shall belong to, and be kept and maintained by, the owners of such buildings at their equal expense: Provided, always, and the above second clause, and the rights thereby conferred, shall depend and be contingent upon the said, his heirs, executors, administrators, or assigns, paying or causing to be paid the said, his heirs, executors, administrators, and assigns, one half (*or as the case may be*) part of the original cost, or expense of said wall, for material or construction, to be arrived at by either actual statement of the same or by appraisal of competent persons. And until such cost or expense is actually paid to the said party of the first part said second party shall not make any attachment to said wall, or use the same in any manner or for any purpose as a party wall or otherwise: But when such payment is duly made by said party of the first part, his legal representatives, heirs, or assigns, then the said wall shall be and become the joint property of the owners of the buildings which it separates and divides.

Further, the parties hereto, each to the other, hereby agree that the aforesaid agreement and undertaking shall be properly executed and shall carry covenants running with the land described above and shall be and remain forever binding upon such parties and their heirs and assigns forever.

In witness whereof the parties hereto have set their hands

and seals this day of, A. D.
19....

In presence of

.....

(seal)

See Text, § 51.

§232. Party Wall Contract.

This agreement, made the day of,
by and between, of,
and of, witnesseth: That
whereas the said is the owner of the lot
and store known as number street,
in the city of; and the said
is the owner of the lot adjoining the same, on the
side thereof, on which last mentioned lot and said
is about to erect a brick store: Now, therefore, the said
....., in consideration of the sum of
dollars, to him in hand paid, the receipt whereof is hereby
acknowledged, doth, for himself, his heirs, executors, admin-
istrators, and assigns, covenant, grant, promise and agree, to
and with the said, his heirs and assigns,
that he, the said shall and may, in the
erection of the brick store about to be built, as foresaid, freely
and lawfully, but in a workmanlike manner, make use of the
..... gable end wall of the said,
or so much thereof as the said, his heirs
or assigns, may desire, as a party wall, to be continued and used
as such forever.

And the said and
do hereby mutually covenant and agree for and with themselves,
and their respective heirs and assigns that if it shall hereafter
become necessary to repair or re-build the whole, or any portion
of the said party wall, the expense of such repairing or re-build-
ing shall be borne equally by the said and
....., their respective heirs and assigns, as
to so much and such portion of the said wall as the said

....., his heirs and assigns, shall or may use for the purposes aforesaid; and that whenever the said party wall, or any portion thereof, shall be re-built, it shall be erected on the same spot where it now stands, and be of the same size, and the same or similar materials, and of like quality, with the present wall.

It is further mutually understood and agreed between the aforesaid parties, that this agreement shall be perpetual, and at all times be construed into a covenant running with the land; and that no part of the fee of the soil upon which the wall of the said, above described, now stands, shall pass to, or be vested in, the said, his heirs and assigns, in or by these presents.

In witness whereof the said parties have hereunto set their hands and seals this day of, A. D. 19....

See Text, § 51.

§233. Principal and Agent Contract. Conduct Business.

Articles of agreement made, entered into and concluded upon, this day of, A. D. between of of the one part, and of of the other part: Whereas the said hath conducted and managed for some time past, the trade or business of the said, and in consideration of the attention and assiduity of the said thereunto, the said is willing to continue the said in the management thereof under the covenants, restrictions, and agreements, hereinafter contained; and in consequence thereof, an inventory and appraisement hath been made and taken of the stock and entered in two receipt books, one of which is to remain in the custody of each of them, the said parties to these presents. and is subscribed by both of them, and the value of the said stock in the whole, appears to the

amount of the sum of \$. : Now these presents witness, that for and in consideration of the covenants and agreements, hereinafter contained on the part of the said to be performed, the said for himself, his executors, and administrators, doth hereby covenant, promise and agree, to and with the said that it shall and may be lawful to and for the said from time to time during the term of years, to be computed from the day of the date of these presents, if they, the said and shall jointly so long live, to trade with the said stock, and to manage and improve the same, in such manner as to the said under the direction of the said, shall seem meet, upon trust nevertheless, and to the intent and purpose that the said shall by and out of the money which shall arise by sale of any part or parts of the said stock, purchase such goods as shall be requisite to keep up and continue the present quality and value thereof, and by and out of the profits, which shall arise from the trade and dealing, in the first place yearly and every year, pay the whole rent of the said house and shop, and pay and discharge all taxes which now are, or shall hereafter be assessed or imposed on him, the said or the said on account of the said house and trade, and in the next place to pay to him, the said, or his assignee, yearly and every year during the said term of eleven years, if they, the said and shall so long live, one clear annuity or yearly sum of by equal half yearly payments, on the day of and the day of without any deduction or abatement whatsoever; and subject thereto, to retain the residue and overplus of the profits which shall arise from his trade and dealing to and for his sole use and benefit, as a recompense and satisfaction for his care and trouble in the sale and management of the said stock. And the said

in consideration of the premises, and of the covenant and agreement herein before on the part of the said contained, doth for himself, his executors, and administrators, covenant, declare, and agree, that he, the said shall and will from time to time, and at all times, for and during the said term of eleven years, if they, the said and shall so long jointly live, diligently apply himself to the care and management of the said stock, trade, and business, according to his best skill, abilities, and discretion, and apply and dispose of the money which shall arise from the sale thereof, and all the profits of his trade and dealings, to answer and discharge the trusts hereby reposed in him, in such manner as hereinbefore is directed, declared or expressed. And also shall and will write true and perfect entries, in proper books of account, of all such goods as shall be sold, and of all monies which shall be paid and received by him, and permit the same, from time to time, to be inspected by him, the said or such other person or persons as he shall appoint. And further, that he, the said shall not nor will at any time during the continuance of the said term of years, buy or sell, or in any wise trade or deal in his own name but in the name only of him, the said upon the trusts aforesaid; nor do any act whatsoever, whereby the said stock, or any part thereof, may be attached, or taken in execution. And also that at next, and so at every succeeding during the said term of years or oftener, if thereto required by the said, he, the said shall and will make a full account in writing of the said stock, then remaining in the said trade, and of the profits thereof, and deliver the same to the said in order to manifest to him a true statement thereof, and of his proceedings in the trade by him carried on therewith. And at the expiration, or at a sooner determination, of the said term of years, he, the said, his

executors or administrators, shall and will deliver up to him, the said, his executors, or administrators, the stock then remaining for his or their own use and benefit, to the value of the sum of losses by bad debts, depreciation of goods, and other inevitable casualties excepted
See Text, §50.

§234. Principal and Agent Contract.

(Snook v. Davis, 6 Mich. 157.)

"This agreement, made the day of, in the year of our Lord, between, of the village of, county, of the one part, and, of said village aforesaid, of the other part, witnesseth as follows:

"The said party of the first part, for and in consideration of the compensation hereinafter specified, hereby agrees to work and labor for the said party of the second part, for and during the term and time that the said may see fit or desire him to work in or about the said store in the village of, in which he is about to commence the sale of,,, etc., and in the same building where the said has heretofore carried on that business.

"The said hereby agrees to take charge of said store, and to do, or cause to be done, all the work necessary to the profitable conducting of said business. He further agrees to sell the goods, wares, and merchandise, that shall from time to time be placed there by the said in a prudent and faithful manner, and at a reasonable and fair profit; to keep all the books necessary in said business in a proper manner, posted as promptly as is usual for merchants; to be at all times ready and willing to make a full exhibit of the condition of the stock and business of said store, and to contract

no debts against said, without his express permission first obtained.

"The said hereby further agrees to keep said store, at all reasonable times, open and ready for customers; and to be liable personally to the said for all bad debts that he may contract in the prosecution of said business, and to leave the possession of the said goods and premises whenever the said may see fit to have him do so. The said further agrees to pay over to the said the avails of all sales from said store, whenever he may be called on by the said so to do; and to deliver to the said all promissory notes and choses in action that may be received in the prosecution of said business.

"And the said hereby further agrees, that, in case he fails faithfully to perform all the said agreements as hereinbefore specified, to forfeit all claims for compensation from and of the said, for his said labor that he may bestow in and about said business as aforesaid.

"And the said hereby agrees to pay the said for his services, to be rendered as hereinbefore set forth, all the profits on the sale of said goods, over and above per cent; or, in other words, the said shall receive from the said the cost and transportation, and all expenses that shall accrue in placing the goods in said store, and, in addition to said costs and expenses per cent on the gross amount of costs of goods and expense of placing the same in said store; and at any time when the said shall wish to close his said business, it shall be at his option to take any remaining goods out of said store, or hold the said personally liable for the price of said goods, reckoned at cost and transportation.

And it is mutually understood and agreed by the parties hereto, that the said goods, wares, and merchandise shall, at all times

from the time they leave the place where they may have been purchased, be at the risk of the said; and all sales and credits given in the sale of any of the said goods, wares, and merchandise shall be at the risk of the said; and that the said shall be at no trouble or expense in any way growing out of said business, save the purchase of said goods; and that he shall receive back, in money, from the said, if he (the said) requires it, the cost and transportation of said goods to the place where they are to be sold, and, in addition to that amount, per cent, as hereinbefore set forth.

"In witness whereof, we have hereunto set our hands, the day and year first above written.

".....
"....."

See Text, §52.

§235. Principal and Surety Contract. Bond.

KNOW ALL MEN BY THESE PRESENTS, That
.....
.....
.....
held and firmly bound unto
.....
.....
.....
in the sum of
lawful money of the United States of America, to be paid to the said
.....
.....
or to certain attorney, heirs, executors, administrators or assigns to which payment well and truly to be made bind heirs,

executors and administrators, and each and every of them, firmly by these presents.

Sealed with seal, dated the day of A. D.

The Condition of this Obligation is such, That

 then this obligation is to be void, otherwise to remain in full force.

Signed, Sealed and Delivered in Presence of

.....

 (L. S.)
 (L. S.)
 (L. S.)

STATE OF MICHIGAN, }
 County of } ss.

.....

 of the of in said County of
, the suret.... named in and who signed the within and foregoing Bond, being duly sworn,
 deposes and says that.... worth in unincumbered property, not exempt from execution under the laws of this State, the sum of Dollars, after payment of all just debts, claims and liabilities.

Subscribed and sworn to before me, this day of, A. D.

.....

Notary Public, County, Michigan.

My Commission expires, 19....

See Text, §53.

§236. Publishers Contract.

This agreement made this day of , A. D. 19...., between , of , author, party of the first part, and , of , publishers, parties of the second part.

Whereas, the party of the first part has in preparation a work entitled for the publication of which the parties are desirous to provide.

It is agreed by the parties hereto, contracting for themselves and their personal representatives and assigns, respectively, as follows:

The party of the first part gives to the parties of the second part the exclusive right to publish, during the full term of the copyright thereof copies of said work, and upon the following terms:

The parties of the second part shall take out a copyright of said work, in due form of law, in the name of the party of the first part, and deliver to him the certificate thereof, and receipts for the volumes required by law to be deposited, which copyright he shall hold subject to this contract.

The parties of the second part shall deliver to him, free of cost, copies of said work.

The parties of the second part shall publish said work in good style, as soon as practicable after receiving the manuscript, and in such manner as they shall deem most expedient, and shall keep the market at all times fully supplied therewith.

The parties of the second part shall render to semi-annually, as soon as practicable after the day of , and the day of , in each year, an account of the number of copies (of each volume) of the work which they shall have sold during the six months preceding such day, accompanied by the certificate of the printer to the number printed (or, and shall exhibit to him, on request, their manufacturer's books, showing

the number printed) during the same period; and they shall at the same time pay to him for copyright, for all copies sold by them as aforesaid, _____ per cent. of the regular retail price.

In case the parties of the second part fail to perform either of the conditions of this contract on their part, the right to publish the work shall revert to the party of the first part, and he shall then have the right of purchasing the plates (and engravings) then used in publishing the work, at a fair valuation.

In witness whereof the said parties have hereunto set their hands this day of,
A. D. 19....

§237. Ratification of Debt Contract. Infant or Otherwise.

Whereas on the day of,
19....,, hereinafter known as the debtor,
(being now a minor) purchased of hereinafter known as the creditor, a for the sum of dollars (and having now attained his majority) and being desirous of ratifying the purchase (which he made during his minority) in order to give full effect to his liability for the payment of said debt,

Witnesseth: This agreement entered into by and between said debtor and said creditor, on the day of,
19....

That in consideration of the mutual promises and agreements hereinafter set forth, whereby, in consideration of said sale and delivery of said to the debtor as aforesaid, the debtor does hereby agree and expressly acknowledge that he is justly indebted to the creditor in the aforesaid sum and that he herewith agrees to pay said sum within months from date hereof with interest thereon at the rate of per cent. per annum, from date until paid; and on the other hand, that, in consideration of the promises and agreements herein-

before mentioned, the creditor hereby agrees that he will not bring suit for or demand payment of the said sum of indebtedness unless and until default shall be made in payment of said sum after the time herein specified.

In witness whereof the said parties have hereunto set their hands and seals this day of
A. D. 19....

§237a. Railroad Compromise Contract. Receipt Form.

(Lansing v. Mich. Cent. R. Co., 126 Mich. 663.)

.....Co.

To.....Dr.,

.....,

For amount agreed to be paid by said company and received, by in compromise of a claim presented to this company by said for damages on account of injury to her person and property alleged to have been suffered by her by wreck of a train of said company on near station, between and, and in settlement and compromise of the suit now pending in the circuit court for the county of, in which said is plaintiff and the Company is defendant (said suit to be discontinued), \$.....

Said company claims that said train was wrecked without fault on its part, but maliciously, by persons having no connection with it, and that it is neither morally nor legally liable in the premises; and it has consented to make this payment solely in compromise of the claim so presented.

Received, hundred (\$.....), in full of above.

.....(L. S.)

In presence of

.....
.....
.....

To, Local Treasurer Company,
.....:

You are hereby authorized and requested to pay the above
amount of hundred and dollars by check to
the order of, my attorney.

..... (L. S.)

In presence of

.....
.....
.....

(Revenue stamp.)

Received check of R. R. Co. for \$.....
in payment of within voucher.

.....

.....

For.....

Witness:

§238. Real Estate Contract. Sale of Land.

(Contract drafted by Mr. C. M. Burton.)

ARTICLES OF AGREEMENT, Made this
day of in the year of our Lord one thou-
sand nine hundred and BETWEEN.....
in the City of, in the County of
and State of, part.. of the first part, and
..... of the same place, part.. of the second
part, in manner following: The said part.. of the first part,
in consideration of the sum of Dollars,
to be to duly paid, hereby agree.. to sell
unto the part.. of the second part all th..... certain piece..
or parcel.. of land lying and being situate in the City of
....., in the County of
and State of, and more particularly known
and described as

.....

 for the sum ofDollars which the
 said part.. of the second part hereby agree.. to pay the part..
 of the first part as follows:

..... Dollars
 at the date hereof, and the remaining

.....
 with interest from on all sums at any time
 unpaid hereon at the rate of per cent. per annum till
 due, and thereafter at the rate of per cent. per annum
 till paid, payable herefrom. Said part.. of
 the second part as part of the purchase price also agree.... to
 pay all taxes and assessments, extraordinary as well as ordinary,
 that shall be taxed or assessed on said premises from the date
 hereof until said sum shall be fully paid as aforesaid, within
 days after the same shall become payable.
 If default be made on the part.. of the second part in making
 such payment of taxes or assessments, said part.. of the first
 part shall have the right to pay the same and have the payment
 due hereon from the time of such payment with interest at
 per cent. per annum till paid.

Said part.. of the first part agree.. that before or upon the
 completion of this contract ..he.. will furnish to said second
 part.. a abstract of title to the above described
 premises.

AND IT IS ALSO AGREED by and between the parties to
 these presents that the said part.. of the second part shall and
 will pay the expenses of keeping the buildings, erected and to
 be erected upon the lands above contracted for, insured against
 loss and damage by fire, (in policies to be held by the part.. of
 the first part, with loss if any payable to vendor.. as
 interest may appear), by insurers in manner and amount approved

by the said part.. of the first part, such expenses to be chargeable hereon if paid by the part.. of the first part, with interest thereon at the rate of per cent. per annum. And that the said part.. of the first part, on receiving the aforementioned payment in full, at the times and in the manner above mentioned, and all sums chargeable in favor hereon, and upon the surrender of the duplicate of this contract, shall, at own proper cost and expense, execute and deliver to the said part.. of the second part, or to assigns, a good and sufficient conveyance of said described lands free and clear from all liens and incumbrances, except such as may have accrued thereon subsequent to the date hereof by or through the acts or negligence of said part.. of the second part or assigns.

It is mutually agreed between said parties that the said part.. of the second part shall have possession of said premises on and after this date while shall not be in default on part in carrying out the terms hereof, taking and holding such possession hereunder, and shall keep the same in as good condition as they are at the date hereof until the said sum shall be paid as aforesaid; and if said part... of the second part shall fail to perform this contract, or any part of the same, said part.. of the first part shall, immediately after such failure, have a right to declare the same void, and retain whatever may have been paid hereon, and all improvements that may have been made on said premises, and may consider and treat the part.. of the second part astenant..... holding over without permission, and may take immediate possession of the premises, and remove the part.. of the second part therefrom.

It is further agreed by and between the parties hereto, that this contract or any right or interest therein or thereunder shall not be transferred or assigned by said part.. of the second part or by any person or persons claiming by, through, or under without the consent of the part.. of the first part hereto indorsed in writing hereon.

And it is agreed that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.
Sealed and Delivered in Presence of

.....
.....
..... (L. S.)
..... (L. S.)
..... (L. S.)

In consideration of \$..... to in hand paid by hereby grant, sell and convey to all our right, claim and interest in and to the within contract, and in and to the premises described, with the benefits to be derived therefrom, and said in consideration of the premises, hereby assume.. and agree.. to perform and carry out all parts of the said contract (not already performed), within provided to be performed by the part.. of the second part thereto.

Dated, 19....
In presence of

.....
.....
..... (Seal)
..... (Seal)
..... (Seal)

In consideration of the undertakings above entered into by the assignee.. hereby consent to the foregoing assignment.

See Text, §45.

239. Real Estate Contract. Farm on Installment.

THIS AGREEMENT, Made this day of, 19...., between, of the town of, in the county of

....., and state of, of the first part, and, of the town aforesaid, of the second part, Witnesseth: That the said party of the first part hereby agrees to sell to the said party of the second part his house, farm, and premises, whereon he now lives, situate in the town of, containing about acres, more or less, together with the crops growing on the same: (*insert description of whatever other property*), together with every article attached to the freehold, for the sum of dollars, which the said party of the second part agrees to pay as follows, viz.: dollars upon signing this agreement; dollars by the day of next; dollars on the day of next, and giving a mortgage on the farm whereon he now lives, for dollars in equal annual payments, with annual interest on the same; at which time the said party of the first part is to make and execute to the said party of the second part a good and sufficient warranty deed for the premises hereby sold, upon the delivery of which the said party of the second part is to secure the remainder, to wit.: dollars by a bond and mortgage for the payment of said remaining sum, in equal annual installments, with interest semi-annually upon the same, interest to commence on the day of next, at which time the said party of the second part is to have full possession of all the premises. And it is agreed by the said parties that this agreement is to bind themselves, their heirs, executors, and administrators, jointly and severally, firmly by these presents.

In witness whereof the parties hereto have set their hands and seals the day and year first above written.

See Text, §45.

§240. Real Estate Contract. To Cultivate Land on Shares.

This agreement, made the day of between, of and

..... of, witnesseth: That the said agrees that he will break up, properly fit, and sow with wheat, all that field belonging to the said, lying immediately of the house and garden of the said, in the town of, aforesaid, and containing acres or thereabouts, on or before the day of next; that when the said crop, to be sown as aforesaid, shall be in fit condition, he will cut, harvest, and safely house it in the barn or barns of the said; and that he will properly thresh and clean the same, and deliver one-half of the wheat, being the produce thereof, to the said, at the granary near his dwellinghouse, as foresaid, on or before the day of, in the year

It is understood between the parties, that one-half of the seed wheat is to be found by the said; that the said is to perform all the work and labor necessary in the premises, or cause it to be done; and that the straw is to be equally divided between the parties, within days after the crop of wheat shall have been threshed, as foresaid.

In witness whereof the parties have hereunto set their hands and seals this day of, A. D. 19....

See Text, §45.

§241. Real Estate Contract. Provisions Against Nuisances.

This agreement, made the day of, 19...., between, of, in, county of, and state of, party of the first part, and, of the same place, party of the second part, in manner following: The said party of the first part, in

consideration of the sum of dollars, to him duly paid, and of the covenants, agreements, and conditions herein, hereby agrees to sell unto the said party of the second part, all those certain lots, pieces, or parcels of land, situate, lying, and being in the county of, and state of, and more particularly described as follows, to wit: (*Here insert description.*) For the sum of dollars, which the said party of the second part hereby agrees to pay to the said party of the first part, as follows: (*Here state terms of payment.*)

And the said party of the first part, on receiving such payments, at the time and in the manner herein provided, shall, at his own proper costs and expense, execute and deliver to the said party of the second part, or to his assigns, a proper deed, for the conveying and assuring to him, or them, the fee simple of the said premises, free from all incumbrances, as herein provided, which deed shall contain a general warranty, and also the clause or provision against the allowance or permission of nuisances, with the covenant or agreement against the manufacture or sale of spirituous or other intoxicating liquors, and which said deed shall be delivered at o'clock, on the day of, 19...., at the office of the party of the first part, street, city, at which time and place said payments are to be made, and this contract carried out.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Signed and delivered in the presence of

.....

See Text, §45.

§242. Real Estate Contract. Land.

(Proctor v. Plumer, 112 Mich. 393.)

"For and in consideration of the sum of \$..... to me in hand paid, I hereby agree to sell to, or his assigns, all that certain piece or parcel of land, situate and being in the township of, county of,, on section, being about acres of land on the corner of the road, and the road, and being the piece of land marked ".....," on the map in county, state of; I hereby agree to make the easterly line or side of said land a straight line; for the sum of, or rather at the rate of \$..... per acre for said land, according to actual survey; said \$..... this day received to apply on purchase price, \$..... within days from the date hereof, at the option of the purchaser, and the balance at any time within years from the date hereof, at the option of the purchaser, in sums not less than \$..... with interest on all sums remaining due or unpaid at the rate of per cent, per annum until paid. And I hereby agree to give for said land, on receipt of said purchase price, a good and sufficient warranty deed, and a abstract of title and taxes to date, showing a perfect title. And I also agree, if desired by said purchaser, to give said deed and abstract when one-half of said total purchase price is paid, and to accept a purchase-money mortgage, drawing interest at the rate of per cent, per annum, for the other one-half of said purchase price; said purchaser or his assigns to have immediate possession of said property.

(Signed) "....." (Seal)

See Text, §45.

§243. Real Estate Contract.

(Fraser v. Fraser's Estate, 42 Mich. 277.)

"Memorandum of agreement made and entered into by and between, of the city of

party of the first part, and of the same place, party of the second part, on the day of, A. D.

Whereas, the late heretofore in his lifetime duly made, executed and delivered to said party of the first part a certain deed of conveyance of lot on plat of a part of the, lying in said city of, being the same premises upon which he then lived and which are described as follows:

And whereas, further, the party of the first part has, since the date of said deed, paid, laid out and expended various sums of money for taxes assessed on said premises for city, state and county purposes, special assessments for payments and for drains, and also for repairs upon said premises up to the present time as will more fully appear by the receipts, documents and vouchers therefor, the greatest part of the money so applied being money belonging to, and the residue from the money of the party of the first part.

And whereas, said party of the first part is desirous and willing that the said party of the second part shall now be entitled to and receive whatever sum or sums of money that shall be derived from the sale of said premises on the following terms:

Therefore, it is hereby mutually agreed by and between the said parties respectively, that the said premises shall be sold in such manner as the said shall desire; that out of the first proceeds of the sale the mortgages affecting said premises shall be paid and discharged; that then whatever sum or sums of money may have been paid or laid out by the said for taxes, repairs and assessments as aforesaid, and insurance on said premises, with such as he may hereafter pay before such sale with interest thereon at the rate of per cent. per annum, from the date of such advances respectively, shall be paid and refunded to him; that if any other

liens legally affect said premises, the same shall also be discharged in like manner; that after such deductions are made, the whole of the residue of the money to be derived from the sale of said premises, shall be the absolute property of said, her heirs and assigns, for her own use and purposes; that upon such sale being made (on these provisions being carried out), both the parties hereto will duly make and execute the requisite deeds for the premises. And in order to afford time for making such sale, it is the desire of the said that the said shall pay the State and County taxes that are now due and payable upon the same, and also pay the installment of interest on said mortgages which shall be due upon the first day of January next.

In witness whereof the parties to these presents have hereunto respectively set their hands and seals on the day and year aforesaid.

..... (L. S.)

..... (L. S.)

Signed, sealed and delivered in presence of

.....

.....

See Text, §45.

§244. Real Estate Contract. Sale of Land.

(Vary v. Shea, 36 Mich. 392.)

"This agreement, made and entered into this day of, A. D. 19...., by and between, of the city of, county of, and state of, of the one part, and, of the same place, of the other part, witnesseth, that whereas said have this day made and executed under their hands and seals a certain indenture of mortgage to one on the follow-

ing described lands, situate in the county of and state of, described as follows, to-wit:
 which said mortgage is given to secure the payment to said by said and of the sum of dollars and cents at the expiration of years from the date thereof, with interest at the rate of per cent. per annum, payable semi-annually until said principal sum be paid: Provided always, That any part of said principal sum may be paid at any time before due in sums not less than dollars at any one time; all sums, both principal and interest, to be paid at the residence of said, in the town of aforesaid; and whereas, also, said have also assigned this day by an instrument under their hands and seals to said, the certificate number of sale of university land, bearing date the day of, A. D. 19...., issued by the commissioner of the state land office of the state of

“Now, therefore, in consideration of the premises, the said doth covenant and agree, to and with the said and, that he will, on the best and most advantageous terms, pay and satisfy and cause to be discharged of record a certain indenture of mortgage, bearing date on or about the day of, A. D. 19...., made and executed by said to one, and recorded in the office of the register of deeds for the said county of, on book of mortgages, on page, and that in case the amount of said money paid for the discharge of said mortgage, including expenses, shall be less than said sum of dollars and cents, he will endorse or cause to be endorsed as paid upon said mortgage, the surplus thereof to the amount of dollars and cents,

and will pay to said and, the balance of said sum of dollars, cents, if any, after deducting such amount so paid for the discharge of said mortgage and necessary expenses, and the sum of dollars, being the amount to be paid to the state of on said certificate, which said sum of dollars is due the said state and was included in said mortgage to secure the payment thereof to said state of and the amount so endorsed on said mortgage in cash; and also that so soon as said mortgage shall be fully paid and satisfied, he will, by a sufficient instrument in writing, under his hand and seal, duly executed, re-assign, transfer and set over to said and the said certificate number of sale of university land, and that he will not, so long as said and perform the conditions of said mortgage, assign said certificate to any other person or persons, and that said and may, so long as they shall perform the conditions of said mortgage, retain possession of and occupy the land mentioned in said certificate.

“And in case said and shall fail to perform the conditions of said mortgage, then said certificate shall be sold in the manner provided by law for the foreclosure of mortgages and the proceeds thereof applied to the payment of said mortgage.

It is further agreed that in case said and shall faithfully and in due season pay to the proper officer all interest due and to become due on said certificate, in that case the interest in the sum of dollars, cents, secured by said mortgage, as aforesaid, shall be reckoned at per cent. per annum instead of per cent., as in said mortgage expressed.”

“It is further agreed that said shall dis-

charge, or cause to be discharged, from said lands, and from the lands recently sold by said and to one, all other mortgages, judgments or attachments, at the expense (as to fees of the register of county) of aforesaid.

"The provisions of these presents are declared binding on the respective heirs, executors, administrators and assigns of each of the respective parties hereto."

See Text, §45.

§245. Real Estate Contract. Annuling of Conveyance.

This Memorandum, made this day of, A. D. 19...., Witnesseth, that,

Whereas, heretofore we, and , his wife, did convey by deed or deeds, to and, certain lands situate in the county of, in the state of, as by the said deed or deeds, or the records thereof, in the office of the register of said county of, will more fully appear; and,

Whereas, by a certain declaration of trust made and executed by the said and, on the day of, A. D. 19...., it was declared and made known that the said and held the said lands in trust for themselves, and one and the said, their heirs and assigns, in the proportions, and upon the trusts, conditions, provisions, and agreements in the said declaration of trust particularly specified and contained, as by reference thereto will more fully appear; and,

Whereas, in or about the month of, 19.... upon request of parties entitled to interests in the said lands, under and by virtue of said declaration of trust, a partition or division of the said lands was sought and attempted to be made, and in pursuance thereof, certain deeds of conveyance to the parties in interest were made and executed by the said

..... and, his wife, bearing date the day of, A. D. 19...., for certain portions in severalty of, in and to the said lands; and,

Whereas, two of the said deeds of conveyance, one to the said, and one to, and which purported to convey in severalty to said and, certain portions of the lands mentioned and described in the said declaration of trust, came to the hands of said and respectively, and were by them caused to be recorded in the office of said register of said county of; and,

Whereas, it is now claimed by some of the parties in interest that all the parties in interest have not assented or agreed to said attempted partition or division of the said lands, or to the said two deeds of conveyance, or either of them, and that the said attempted partition or division of the said lands, and the said two conveyances were and are wholly null, void, and of no effect; and,

Whereas, it is now desired by the said parties to restore the legal title and estate of, in and to the said lands as it was before the said attempted partition or division thereof, and the said two deeds of conveyance, and to cancel the said two deeds of conveyance, to the end that all parties who, under or by virtue of the said deed from said and wife to said and, or the said declaration of trust, possessed, prior to the said conveyances to said and, any trust estate, or any right, title, or interest, benefit or advantage in or to the said lands, or any part thereof, may be restored to, and re-instated in the same in the same manner, and to the same extent, and with the same force and effect, precisely, as if such conveyances to said and had never been executed or delivered.

Now, therefore, in consideration of the premises (and of the

request made to us by other parties in interest in said lands, so to do), and for the purpose and to the end aforesaid, we, the said and, his wife, and the said, do hereby consent and allow that the said attempted partition and division of the said lands so as aforesaid sought to be made, and the said two conveyances to us above mentioned, were and are null and void, by reason and on account of the want of the concurrence and consent thereto of all the parties interested in the said lands, under the said declaration of trust, and also that we hold the lands so conveyed to us in and by the said two deeds to us, subject to the same trusts as are mentioned in the said declaration of trust, and not discharged therefrom; and we do therefore hereby agree to surrender and deliver up, and upon the happening of each and every of the contingencies and conditions hereinafter mentioned, we do here surrender and deliver up the said conveyances, and do hereby agree to grant, quitclaim and release, and upon the happening of each and every of the contingencies and conditions hereinafter mentioned, we do hereby grant, quitclaim, and release to the said and, as such trustees as aforesaid, the lands and property described in and purporting to be conveyed in severalty to us by the said two deeds of conveyance.

To Have and To Hold the same to the said and, as such trustees as aforesaid, and subject to all the trusts, provisions, conditions, and agreements in the aforesaid declaration of trust specified and contained, and so that the legal title and estate in and to the whole of the lands so as aforesaid conveyed by said and his wife to said and may be revested in said and as such trustees as aforesaid, and may be by them held, managed and disposed of in accordance with the terms of said declaration of trust, as fully and with the like force and effect, in every respect, as if the said two deeds of conveyance unto us, dated the

..... day of, 19...., had never been executed; and also that we, the said and the said, and each of us, may and shall have, retain, possess, and enjoy the same rights, interests, equities, benefits, advantages, and trust estate, of, in, and to all the said lands so conveyed by said and wife to said and, and mentioned in the said declaration of trust, as if the said two deeds of conveyance unto us had never been executed or delivered unto us, or either of us.

§246. Revival of Debt Contract Under Statute of Limitations.

Whereas, on the day of, 19....,, hereinafter known as the debtor, bought of, hereinafter known as the creditor, the following property:

..... for the sum of dollars, which said sum still remains due and unpaid, on the day of, A. D. 19...., being more than years ago, and for that reason is barred by the statute of limitations, and the debtor now being desirous of renewing and receiving the indebtedness so that the legal liability of said debtor for the payment of such debt will be fully established;

Witnesseth: This agreement made and entered into by and between the said debtor and said creditor.

That in consideration of the said sale and delivery of said property to the said debtor as aforesaid and the forbearance of said creditor to bring suit for said sum before the statute of limitations had run against such indebtedness, the debtor hereby agrees and does expressly acknowledge that the said debt is justly due to the said creditor, and the said debtor further agrees to pay the said sum on the day of A. D. 19...., with interest thereon at the rate of per cent. per annum from date until paid.

That in consideration of the promise and agreements hereinbefore mentioned, the creditor does hereby agree not to bring suit or demand payment of said sum unless and until default shall be made in the payment thereof at the time herein specified.

In witness whereof, we have hereunto set our hands and seals this day of, A. D. 19....

§247. Riparian Contract.

(Fletcher v. Thunder Bay & Boom Co., 51 Mich. 284.)

It is hereby stipulated and agreed by and between
, and I,, as follows, to-wit: To
 divide up the middle ground, or shore, in the
 river, in section, township north, range
 east, as follows: Commencing at the upper end, at a
 point where feet of water is reached, going down stream,
 dividing the space between the same points into four equal
 parts, that is to say, of the same length up and down
 the river, the conveying the same by partition deeds
 at the earliest possible date, to-wit, two parts to
 and others, one part to, and one part to
 And whereas, the said,
 being desirous to build or erect a upon
 said middle ground, shall have the first choice of a site confined
 within the limits aforesaid, and may also use, occupy and
 possess, keep and defend the whole from all other persons, until
 wanted by the said and;
 provided that nothing herein shall prejudice any existing rights
 of the said and

.....

.....

See Text, §54.

But it is hereby expressly provided, understood, and agreed, that this indenture shall not be of any force or effect whatsoever, but the same shall be in every respect null and void, until, and except upon the happening of the conditions and contingencies hereinafter expressed and contained, and each of them, viz:

1. That this instrument shall be executed and delivered by all the parties thereto, that is to say: By the said and, his wife, and by the said, as well as by the said and, as such trustees, as aforesaid.

2. That a certain indenture of mortgage, made and executed by the said to and, and bearing date the day of, A. D. 19...., and which was recorded in the office of said register of said county of, on the day of, A. D. 19...., in liber of Mortgages, page, etc., shall be by the mortgage therein, their representatives and assigns, duly canceled and discharged.

And we, the said and, do sign, seal, execute, and deliver this instrument, and do hereby consent and agree that we receive the same for the uses and purposes hereinbefore mentioned and expressed; and we are to hold and possess the legal title and estate of, in and to the lands so as aforesaid granted, quitclaimed, and released unto us by said and wife, the said, in the manner and for the purposes and upon the terms, trusts, provisions, conditions, and agreements in the aforesaid declaration of trust specified and contained, as fully to all intents and purposes as if the same were again repeated and set down.

In Witness Whereof, the parties hereunto have hereto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of

(Signatures and seals of parties.)

Supplemental Agreement.

It is hereby agreed and stipulated between the parties hereto that the within described premises shall be divided by a proper survey, so that shall have the north or upper quarter, his quarter next adjoining, and the lower or south half of the same, measuring in distance from point to point, as described within.

Witnesses:

.....

Quit Claim Deed Following Above Contract.

This indenture, made and entered into at the city of
, in the county of, and state of
, on the day of
 in the year of our Lord one thousand nine hundred and
, by and between
 of the said city of and
 of the same place, and, of the county of
, all in the state aforesaid, witnesseth: that
 whereas, the said and have
 heretofore and do now own jointly certain real estate, consisting
 of lots with buildings thereon, as hereinafter described;
 and whereaſ, the interests of the parties in the said property are
 in the following proportions, namely: one-
 half, one-fourth, and
 one-fourth, and is to be divided and set apart in such propor-
 tions; and whereas, it is now agreed and determined by all the
 above-named parties to divide the same among the several
 owners above named: Now, therefore, this indenture witness-
 eth, that to there is hereby set apart and
 conveyed all the right, title and interest of
 and aforesaid, and they do hereby forever

quitclaim to the said the following described property, namely:, with all and singular the hereditaments and appurtenances thereunto belonging, to have and to hold the same to his own proper use and benefit, forever. And to there is hereby set apart and conveyed all the right, title and interest of and aforesaid, and they do hereby forever quitclaim to the said, the following described property, namely:, with all and singular the hereditaments and appurtenances thereunto belonging, to have and to hold the same to his own proper use and benefit, forever. And to there is hereby set apart and conveyed all the right, title and interest of and aforesaid, and they do hereby forever quitclaim to the said the following described property, namely:; with all and singular the hereditaments and appurtenances thereunto belonging, to have and to hold the same to his own proper use and benefit, forever.

All the said property herein described being in the county of and state of And it is hereby further stipulated and agreed, by and between all the above-named parties, that each of the several parties to whom the several lots and parcels of land are herein set off, divided and conveyed, shall have and hold the said lands and tenements to the said parties, their heirs and assigns forever.

In witness whereof, the said parties have hereunto set their hands and seals, on this, the day and year first above written.

..... (L. S.)
 (L. S.)
 (L. S.)

Signed and delivered in the presence of

.....

§ 247a. Sale Contract. Note.

In making a draft of a contract which comes under the "Bulk Act," it is well to consult this act. Public Act 1905, No. 223, p. 322. See the following cases: *Speer v. Travis*, 145 Mich., 721; *Farrar v. Lumber and Coal Co.*, 149 Mich., 118; *Musselman Grocer Co. v. Kidel, Dater & Press Co.*, 151 Mich., 478; *Pierson & Hough Co. v. Noret*, 154 Mich., 267; 157 Mich., 316.

§248. Sale Contract.

(*Sheridan v. Peninsular Savings Bank*, 116 Mich. 546.)

Memorandum of agreement, made this day of....., between, of, county,, party of the first part, and and of, and, of (constituting a committee heretofore appointed to bid in and sell the..... Company's property at, in the foreclosure suit of, Trustee, v. Company and, of), parties of the second part, witnesseth that:

Whereas, the said first party has heretofore made a proposition to purchase the property of the said Company, and to make certain improvements thereon, which is hereby deemed a part hereof, and is desirous of obtaining immediate possession for the purpose of making such improvements, and in order to close contracts for the and manufacturing of, as well as other purposes; and

Whereas, the parties of the second part are desirous, in case said Company's property be bid in by them, or by anybody in their behalf and interest, of selling the same to the said party of the first part, and are therefore willing that said party of the first part should have immediate possession of said property for the purpose of making the improvements contemplated, and running and operating said plant until said foreclosure sale; and

Whereas, in order to effect said sale, the property will have to be hereafter advertised, thereby necessitating a delay until on or about next, at which time it will be too late to make the repairs contemplated, or to obtain contracts for manufacturing for the season of

Therefore it is mutually agreed as follows:

(1) That the said party of the first part hereby agree to purchase said property, known as the Company's Property, consisting, generally, of,,,,,, and, intending to constitute the entire plant and outfit of the said Company at, from the said parties of the second part, in case it be sold to them, or anybody in their behalf and interest, and to pay therefor the sum of (\$.....) dollars over and above the improvements to be placed thereon, which payments shall be made as follows: (\$.....) dollars thereof to the said parties of the second part, or to whomsoever they shall direct, and (\$.....) dollars thereof to, of,, or to whomsoever he shall direct,—which payment shall be made as follows: () per cent. () years from date hereof, () per cent. () years from date hereof, () per cent. () years from date hereof and the balance () years from the date hereof, with interest thereon at the rate of () per cent. per annum upon all sums unpaid, payable semi-annually.

(2) And the said party of the first part further agrees, in consideration of the premises aforesaid, to improve and place improvements upon said property during the year in manner and form satisfactory to said party of the first part, not less than (\$.....) dollars, nor exceeding in amount the sum of (\$.....) dollars, and to immediately, upon obtaining possession, commence making such improvements; also, to pay all taxes on

said property from the date hereof and to keep the said property insured in amount of (\$.....) dollars in good board insurance companies, which amount may be decreased in proportion as the principal is reduced by payment.

(3) And the said parties of the second part hereby agree, in consideration of the premises aforesaid, in case they purchase or bid in said at said foreclosure sale, or in case the same be bid in or purchased by any person or persons in their behalf and interest, they will immediately close contract with said party of the first part for the sale and purchase thereof, retaining the title in themselves until paid for, upon the terms and conditions above set forth. And it is further agreed that the said party of the first part may take immediate possession of said property for the purpose of making the necessary repairs and improvements, as well as for doing any other business during the coming season, and may operate said until said foreclosure sale is made.

(4) And it is further agreed that, in case the said second parties, or any one in their behalf or interest, should not become the purchaser or purchasers at said sale, and said property should be sold to some third or outside party, who will not carry out the above-mentioned contract, then, in that event, the said party of the first part shall be entitled to have refunded from proceeds of sales of the property to him, from the avails of said property, from the said parties of the second part, all moneys expended for repairs and improvements, insurance and taxes, and any other necessary expenditures or disbursements, together with (\$.....) dollars a day for his time spent in or about said business, and to be relieved and saved harmless from any contracts for repairs, betterments, or improvements which may not at any time be fully consummated or concluded, as well as to be indemnified and saved harmless from any and all contracts for the or manufacture of, at not less than (\$.....) dollars, which said party of the first part may prior

to that time enter into, said party of the first part paying.....
 (\$.....) dollars per day, rental for the
 use of said and property for each and every day
 that same shall have been operated; which payment to said first
 party by said second parties shall be made within a reasonable
 time after such sale, the said first party retaining possession of
 said and operating the same until said payment
 shall be made.

In witness whereof, the said parties have hereunto set their
 hands and seals the day and year first above written.

“.....
 “.....
 “.....
 “.....

See Text, § 55.

§249. Sale Contract.

This agreement, made the day of
 in the year, between, of
, and, of,
, witnesseth: That the said
 for the consideration hereinafter specified, agrees to sell to the
 said, and the said agrees to buy
 of the said all the stock of goods and wares and
 merchandise, belonging to the said, and now
 being in the store occupied by him at street, in the
 city of, together with the furniture and fixtures
 thereunto appertaining, and also all the,
,,, and, of
 every name and nature, bought or contracted for by the said
 and intended for sale in the said
 store. The stock of goods and,
 wares and merchandise is to be inventoried to the said
 at the original cost, without including transportation
 expenses; and deduction is to be made for any depreciation in
 value on account of damage, wear or tear; the furniture and

fixtures are to be inventoried at their fair cash value, and if the above parties cannot agree as to such valuation, and as to such deduction as aforesaid, the same shall be determined according to the appraisal of , , and of aforesaid, or a majority of them; the , , , , and , are to be inventoried at their original cost. Said inventory is to be completed within ten days from the date hereof, and the property above specified delivered over to the said immediately thereupon.

In consideration of the premises, the said agrees to execute and deliver to the said , as and for the purchase money of the above mentioned property, and in full payment therefor, his promissory note, or notes, in such several sums as the said shall direct, payable at months after date, at the Bank, with interest. (*If necessary, add: and endorsed by , of , aforesaid.*)

And the said further covenants and agrees, to and with the said , that he will not, at any time hereafter, engage, directly or indirectly, or concern himself, in carrying on or conducting the business within miles of the premises now occupied by him as aforesaid for such purpose.

And it is expressly understood that the stipulations aforesaid are to apply to, and to bind, the heirs, executors, and administrators of the respective parties, and in case of failure, the parties bind themselves, each unto the other, in the sum of dollars, as fixed and settled damages, to be paid by the failing party.

In witness whereof the parties have hereunto set their hands and seals this day of , A. D. 19....

See Text, §55.

§250. Sale Contract. Restraint of Trade Clause.

And in further consideration of the premises, and of the

payment by the said party of the second part, of the consideration hereinbefore expressed, and for the purpose of enabling the said party of the second part, his personal representatives and assigns, to acquire and enter upon, manage, conduct, continue, and carry on the aforesaid business of the said, the said party of the first part hath for himself, his personal representatives and assigns, covenanted, granted, promised, and agreed, and doth by these presents covenant, grant, promise, and agree to and with the said party of the second part, his personal representatives and assigns, that from and after the execution of this agreement, he will not at any time for the period of [. years] from and after the date hereof, either alone, or jointly with, or as agent for or employe of any person or persons, firms or corporations, excepting only as agent for or employe of said party of the second part hereunto, his personal representatives or assigns, and either directly or indirectly set up, exercise, conduct, or be engaged, employed, or interested in or carry on in, any occupation, interests, or privileges similar to or of the same nature with the business, occupation, interests, and privileges so heretofore exercised, conducted, and carried on by said, and so hereby sold and assigned, transferred, and set over to said party of the second part, nor set up, make, carry on or encourage, or be engaged or interested in any opposition to the said business so hereby sold, assigned, transferred, and set over, and so hereafter to be carried on by said party of the second part hereunto, his personal representatives and assigns, nor do anything to the prejudice thereof.

See Text, §55.

§251. Sale Contract. Share of Stock in Company.

This agreement, made the day of, between, of, and, of, witnesseth: That the said agrees to sell and convey to the said, on or before the day of next.

..... shares of the capital stock of the company, now owned and held by the said and standing in his name on the books of the said company, and to make and execute unto the said all assignments, transfers and conveyances, necessary to assure the same to him, his heirs and assigns.

In consideration whereof, the said agrees to pay unto said, for each and every share of such stock, the average cash market price of the same, for and during days preceding the day of, aforesaid, to be determined by the sales made at the board of brokers in the city of

In witness whereof the parties have hereunto set their hands and seals this day of, A. D. 19....

See Text, §55.

§252. Sale Contract. Business.

(Beal v. Chase, 51 Mich. 500.)

"This agreement, made the day of, in the year of our Lord, between of the city of, in the county of, in the state of, and of the same place, witnesseth, that the said party of the first part grants, bargains, sells and conveys unto the said party of the second part in consideration of the sum of dollars to him in hand paid, the machinery, boiler, engine, presses, tools, furniture, and stock of whatever name or nature, in the building occupied by said as his steam printing office, and this day sold by him to the said party of the second part, together with all accounts for unfinished work on which payment has not already been made; together with the subscription list of the and also the copyright of a book called '.....' and also one other book called the '.....' also a book called, a copyright of which is to be hereafter obtained, together with the good-will

of the business of printing and publishing, and also the right to use the name of in connection with said books, all the stereotypes and electro-plate for said books now completed, and also the book-bindery, tools and stock, and all contracts for printing and publishing, together with all moneys to be hereafter received upon jobs or books unfinished. And the said party of the first part also agrees, that while said , he will not, either directly or indirectly, engage in the business of printing and publishing in the state of

"And the said, on his part, if he chooses, may carry on said business, and he shall have the exclusive right, under the name of '.....,' and may add '....., proprietor,' and he also agrees to fulfill all contracts heretofore entered into by said party of the first part for work, printing and advertising or publishing, and is to receive all moneys unpaid on said contracts. He is also to furnish the and to all subscribers for the balance of their subscription year, and receive all unpaid subscriptions. All property belonging to workmen, and all books or papers left for binding, are excepted out of this sale; but it is intended to include all furniture, tables, desks and everything used to carry on said business of printing, publishing and book-binding. The party of the second part is also to have the privilege for one year of using the cistern and privy, on lot west of steam printing house, for engine and hands of building. is to pay taxes assessed to on the property this day conveyed to said, real and personal, for the year

"The party of the first part also sells to the party of the second part his gray horse and establishment, purchased by him of, including buggy, cutter and harness, saddle, bridle, buffalo robe, bells, etc.

"Said is to have the privilege of receiving the letters connected with said business, and opening the same.

"Witness our hands and seals," etc.

Signed by and

See Text. §55.

§253. Sale Contract.

(Dayton v. Stone, 111 Mich. 196.)

"Agreement made this day,, between and Whereby sells entire stock of goods, fixtures, and store furniture situated at,, at wholesale cost price, except goods that are damaged, to....., the damaged goods at prices agreed upon, and is to take in pay for said goods what notes now hold against as part pay; and..... (..) houses and lots on (.....), now owned by, for dollars (\$....); one house and lot in now being erected, to be finished according to plans and specifications, said house to be completed by the day of next, for \$..... Balance, if there should be any, due bill on the firm for said amount, to be paid in lumber, out of shop. Parties are each to pay one-half of the commission, one and one-half per cent. each. Invoice of goods to be commenced, Each of the parties to pay one-half of the expense of invoicing.

".....
 ".....

"Witness:"

See Text, §55.

§254. Sale Contract. Fruit.

(Town v. Jepson, 133 Mich. 676.)

"Witneseth, that the said hereby agrees to deliver and sell, and does sell, unto the said tons of good, prime, wood-evaporated apples, at cents per pound, to be packed in pound boxes, net weight; same to be delivered on or before, f. o. b. cars at; terms, sight draft, with bill of lading attached. And said agrees to buy aforementioned stock on terms and

conditions as specified. And it is agreed that said may furnish tons more on same terms, if they make them. Weight guaranteed."

See Text, §55.

§255. Sale Contract—Ice.

(Hickey v. O'Brien, 123 Mich. 612.)

"In consideration of the covenants and conditions hereinafter mentioned, first parties hereby agree to furnish second parties with all the ice that they may require to carry on their ice business in said city for the period of years from and after,, at the rate of (\$....) cents per ton, to be paid for monthly from and after,

"Second parties hereby agree to purchase from first parties all the ice necessary to carry on their ice business in said city for the period of years from and after and to pay first parties therefor the sum of (\$.....) cents per ton, to be paid monthly from and after,

"It is hereby further agreed by and between the parties hereto that, should first parties, during the continuance of this contract, be compelled, by reason of an open winter or otherwise, to harvest ice at a point distant from the river, that second parties shall pay the first parties, in addition to the (\$.....) cents per ton hereby agreed on, the additional cost per ton to first parties in harvesting, delivering, and caring for said ice during that season or seasons.

"It is hereby further agreed by and between the parties hereto that second parties shall at all times keep accurate and correct books of account of their ice business during the continuance of this agreement, and that the books of account so kept shall at all times be open to the access and inspection of the first parties."

See Text, §55.

§256. Sale Contract. Nursery Stock.

(Bronson v. Herbert, 95 Mich. 478.)

"The following agreement, made and entered into this day of, between and of of the first part, and, formerly of, now of, of the second part, witnesseth:

"..... & agree to furnish the said, for the fall packing of; such nursery stock as the said may require, at the following prices; it being mutually understood by both parties that such varieties of trees and such ornamentals as & do not grow or have on hand the said shall have the privilege of buying of other parties, unless the said & prefer to buy such stock of other parties for the said, and, in case of all such purchases by either party, the said shall pay to & cent for each tree so purchased, in addition to the cost of the stock, for packing the same.

"It is understood that the said is to act as general agent for the said & for the sale of nursery stock, with the privilege of using orders and letter-heads printed in the name of the firm &

(Here follows a list of trees and prices).

"All the above stock to be first class, billed upon our (..... &) packing ground, and delivered at the depot without extra charge. The said to furnish one man, and assist, himself, in packing.

"The party of the second part agrees to purchase his nursery stock, as above mentioned, of the parties of the first part, and to pay cash for the same (or give acceptable notes) at the time of delivery. The said & agree to furnish agents' certificates to such men as the said may employ.

"In consideration of the above-mentioned privileges the said

..... agrees to protect the said from all harm and expense of suit in case of prosecutions arising from sales and collections of said nursery stock, or from any other cause, the same as if he was selling in his own name; it being understood that the said & have no interest or profits from the retail sales of the said

.....
“.....”

“.....,,

“It is hereby mutually agreed that the above contract, with all conditions and specifications, is renewed and continued for the spring sale of, except the changes in prices in, which are to be the prices for spring.

“..... &

“.....

“.....,,

“We the undersigned, agree to renew within contract for the fall of, with the following changes: That dwarf pears are to be at cents, and apples are left open for future agreement.

“..... &

“.....

“....., Witness.”

“..... &, Nurserymen,,

“You will please have dug and furnish me the following nursery stock, for which I agree to pay the prices set opposite the respective articles, amounting to \$....., in cash, on delivery at, in the fall of Should any part of such stock be omitted, through miscount or otherwise, the price of such part shall be deducted. No countermands accepted.

“..... crab apples.

“..... standard pears.

“..... dwarf pears.

“..... plum trees.

“It is mutually agreed that the stock in this contract is not warranted further than to be delivered in good condition, and

the order not subject to countermand, and must be taken according to the printed condition hereon. Agents not allowed to plant stock when delivered, and no outside agreement or bargain by the agent shall in any way affect this contract. The fruit trees, if any, are to be grafted or budded, and all the above are to be delivered in a thrifty and healthy condition. Standard apple, standard pear, and cherry trees are not to be less than feet in height; plum trees not less than feet; dwarf pear trees not less than feet.

"Date,,

"Agent's name,

"Full name of purchaser,

"Purchaser's signature,

See Text, §55.

§257. Sale Contract. Propeller.

(*Mitchell v. Chamber*, 43 Mich. 152.)

This memorandum of agreement made and entered into this day of, by and between
....., of and and
..... of, of the second part
witnesseth:

"For and in consideration of the sum of
and dollars lawful money of the United
States to them in hand paid by the said party of the second
part, the said party of the first part agrees to pay or cause to
be paid a certain mortgage on one-quarter of propeller Dun-
kirk, for dollars, with interest at
per cent., said mortgage bearing date of,
..... and the, in
favor of Also and
dollars of sundry claims against one-quarter of said propeller
Dunkirk, and also to pay any and all other legal claims now due
against said one-quarter, and to see the said
harmless from the same.

"Said party of the first part further agrees that on the

day of, to pay or cause to be paid to the said party of the second part the sum of and dollars, the same being the difference between dollars paid and assumed by the said party of the first part and, the purchase money agreed on by said parties for one-quarter of propeller Dunkirk.

"And it is further agreed by and between said parties that should any legal claims come against said one-quarter over and above the mentioned above, then it may be lawful for said party of the first part to pay said amount out of said and dollars.

"Witness our hands and seals this day of A. D.

..... (L. S.)

..... (L. S.)

..... (L. S.)

..... (L. S.)

....."

See Text, §55.

§258. Sale Contract. Lumber.

(Phillips v. Raymond, 17 Mich. 289.)

"Memorandum of agreement, between R..... & A....., county, and county,

"First. That the said agrees to take and receive from the first party aforesaid, all the cherry, whitewood, beech and maple lumber that their mill is able to get out up to the day of next,

"Second. That the said lumber shall be cut according to bill rendered by the said

"Third. That the price to be paid for the same is \$...... per thousand feet for cherry, and \$...... per thousand feet for whitewood, beech and maple, delivered on board vessel at

"Fourth. The same lumber is to be measured by the parties interested, or others chosen by them.

"Fifth. The said to pay said & \$...... on the first day of next, on logs already purchased by them, said amount to be secured by logs, and placed in the name of on the books of &, and thereafter all logs to be purchased in the name of said; and the said agrees to pay on them \$...... on the first of, and \$...... on the of The balance of payments to be made on delivery of said lumber, in drafts payable at thirty and sixty days' sight in

"Sixth. It is understood that if the measurement of said lumber overruns the scalage the difference belongs to said and all lumber remaining unshipped after the of to be paid for at that time in drafts as above mentioned.

".....

".....

"Per

"....."

See Text, §55.

§259. Sale Contract—Partnership Interest.

(Trevick v. Mumford, 31 Mich. 466.)

"Know all men by these presents, that, of the city of, in the county of and state of, of the first part, for and in consideration of the sum of and dollars and cents, lawful money of the United States, to me paid by, of said, of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents do grant and convey unto the said party of the second part, his executors, administrators or assigns, the undivided one-half of all his title and

interest in and to all the property, both real and personal, stock in trade, money, effects, and assets of every name and nature of the partnership heretofore carried on in said under the name of and the one-half interest in said business, subject to one-half of the first party's liability on the debts of said firm, including mortgages on the real estate, the amount of which is in a schedule hereto attached, which the second party assumes and agrees to pay the proportion of said debts subject to which this sale is made, and the proportion which the second party assumes is of said partnership debts, belonging to him and now in possession at said; to have and to hold the same unto the said party of the second part, his executors, administrators and assigns, forever. And the said party of the first part, for himself, his heirs, executors, and administrators, does covenant and agree to and with the said party of the second part, his executors, administrators and assigns, to warrant and defend the sale of said property, goods and chattels hereby made unto the said party of the second part, his executors, administrators, and assigns, against all and every person or persons whatsoever, subject to such proportion of said firm debts.

"In witness whereof I have hereto set my hand and seal this day of,

..... (Seal).

See Text, §55.

§260. Sale, Building and Loan Contract.

This Memorandum of Agreement, made the day of, 19.... and between, of the city of, party of the first part, and, of the same place, party of the second part, witnesseth as follows:

First, that the said party of the first part agrees to sell, and the said party of the second part agrees to purchase from him, all those certain lots, pieces, or parcels of land, lying, and being in the ward of the city of

and which, taken together, are bounded and described as follows, to wit: [*description*] all for the sum of dollars, payable as follows, and on the terms and conditions following—that is to say.

Second, that said party of the second part shall forthwith commence on said lots of land the erection of good and substantial dwelling-houses, to be of [*insert description of houses*], to be built of good materials and workmanship, and to conform in all respects to the plans and specifications and drawings of, architect, as the same have been modified and signed by both of the parties hereto.

And to enable said party of the second part to erect and finish said dwelling-houses, and the walks and yards in front and rear of the same, the said party of the first part does agree to lend to the said party of the second part, the sums of dollars towards the erection and finishing of each of the said houses; and that such loan shall be made at the times and in the manner following, to-wit: [*insert here the different amounts to be advanced as the building progresses towards completion*].

And it is further agreed, that the said houses shall be so erected and finished under the direction and supervision of, who is hereby appointed superintendent for that purpose, and whose certificate in writing, certifying that the work has been done to his satisfaction, and that the payment demanded is due, shall first be obtained to entitle the said party of the second part, to the several amounts agreed to be loaned as aforesaid. The expenses of the said shall be borne by the party of the first part.

And it is further agreed, that if, at any time, when an advance, on account of such loans, is demanded, there shall be any unsatisfied mechanic's lien or liens affecting the title of said premises, or any part thereof, the amount agreed to be loaned shall not be advanced until such lien or liens are satisfied or discharged of record.

And it is further agreed, that when the said houses, walks and yards shall be completely finished, ready for occupa-

tion as aforesaid, and when the certificate of the said shall be produced to that effect, and when all taxes, assessments, and water rates, assessed or imposed upon said premises, or any part thereof, after the date of this agreement, shall be paid; and when all liens affecting said premises, or any part thereof, incurred by the said party of the second part, shall be discharged of record, then the said party of the first part shall, on the execution and delivery of the bonds and mortgages hereinafter mentioned, convey the said premises to the said party of the second part, by warranty deed, with the usual full covenants, in which deed his wife shall join, and by which the said premises shall be conveyed free from all incumbrances; that to entitle the said party of the second part to such deed, he shall, at the time of the delivery thereof, execute and deliver to the said party of the first part, bonds and mortgages, each of which bonds shall be conditioned for the payment of the sum of dollars, and secured by a mortgage of or upon one of the said lots, with the house then erected thereon. All of said bonds and mortgages shall bear date on the day of the delivery of said deed of conveyance, and the money secured thereby shall become due and payable in years from the date thereof, with interest at six per cent. per annum, to be computed from such date, and to be paid semi-annually, and shall contain the usual interest condition of thirty days. All of said mortgages shall be executed by the said party of the second part and his wife, and shall contain usual insurance covenants that the premises shall be kept insured in an amount to be approved by, and the policies to be assigned to, the party of the first part, and said mortgages shall also contain the usual tax, assessment, and interest [and receiver] clauses.

And it is further agreed, that interest at the rate of per cent. per annum shall be paid by the party of the second part to the said party of the first part on the amount of the purchase money above mentioned, from the date of this agreement, and on the amounts agreed to be loaned from the date of their respective advances to the date of said bonds and mortgages, or

such interest may be retained by said party of the first part out of and from the last amount so agreed to be loaned. And said party of the second part shall bear and pay all taxes, assessments, and water rates that may be assessed or imposed upon said premises after the date of this agreement, as also the costs and charges of, counselor-at-law, for drawing this agreement and the bonds and mortgages aforesaid. And it is hereby made optional with the said party of the first part to have the amount of the purchase money and loans secured by more than bonds and mortgages, provided the same do not exceed two mortgages on each of said houses and lots. And it shall also be optional with said party of the first part to mortgage said premises to the amount of said purchase money and loans, or any part thereof, and then convey said premises subject to such mortgages, taking from the said party of the second part other bonds to make up the deficiency, if any, of the full amount of said purchase money and loans, secured by mortgages of or upon said houses and lots, and containing the same terms and conditions as the bonds and mortgages first above mentioned.

And it is further agreed, that when said houses shall be inclosed and roofs on, said party of the second part shall cause the same to be insured against loss or damage by fire, in an insurance company in the city of, and shall assign the policies of insurance to said party of the first part as collateral security for said purchase money and loans; that such insurance shall from time to time be increased as said houses progress in the course of erection until they shall be completely finished; and that at the time of the delivery of said deed policies of insurance shall be effected on each house and assigned to said party of the first part; and that whenever an insurance is to be made or effected as above provided, it shall be in an insurance company, and to an amount to be designated and approved by said party of the first part; and in case said party of the second part shall fail to effect such insurance or assign such policy or

policies, then the said party of the first part shall effect the same, charge the expense thereof to the said party of the second part, and deduct the same from the next advance or installment of said loan that shall thereafter become due.

And it is further agreed, that the said party of the second part shall not sell, assign, or dispose of this agreement, or his interest therein, without the written consent of said party of the first part first had and obtained; and that said party of the first part shall not be required to make said loan, or any part thereof, or said deed to, or accept the bonds and mortgages of any other party or parties, unless he shall elect so to do.

And it is further agreed, that said party of the second part shall forthwith commence the erection of said houses, shall proceed with the same without unnecessary delay, and shall furnish all materials, and completely erect and finish the same, with the walks and yards thereof, on or before the day of, 19....; and in case the said party of the second part shall fail to erect and completely finish the said houses, with the walks and yards thereof, on or by the day of, 19.... or in case the work of erecting said houses shall, in the opinion of said, be unreasonably delayed, or in case the said party of the second part shall sell or assign his interest in or under this agreement without the written consent aforesaid, that then, and in either of such events, the said party of the first part shall have the right, and he is hereby expressly authorized and empowered to sell the whole of said premises, together with the unfinished buildings, thereon, at public auction, to the highest bidder, on giving to said party of the second part fifteen days' notice thereof, and on advertising the same for fifteen days in one of the public newspapers printed in the city of, and that at such sale said party of the first part shall be allowed to bid; which sale shall be a perpetual bar against any claim to be made for any of the said buildings or erections, and any claims under this agreement by the said party of the second part, and all persons claiming under him; and he, the said party of the second

part, shall forthwith quit and abandon said premises; and this agreement shall thenceforth cease and determine, except that in case the said sale shall produce an amount more than is sufficient to pay the contract price of said lots, and loans which have then been made, and interest and expense of insurance, and costs of sale as aforesaid, the excess shall be paid to the said party of the said second part. And if such sale shall not produce sufficient to satisfy said contract price, loans, interest, expense of insurance, and costs of sale, then the said party of the second part shall forthwith, and on demand, pay such deficiency to the said party of the first part.

And it is further and finally agreed, that the stipulations and agreements aforesaid shall apply to and bind the heirs, executors, and administrators of the respective parties thereto.

In witness whereof, the parties have hereunto set their hands and seals the day and year first above written.

§261. Submission Contract. Clause in Contract.

(*Hoste v. Dalton*, 137 Mich. 524.)

"If any question should hereafter arise between the parties hereto as to the construction and enforcement of this agreement, the same shall be submitted for decision to this court (the agreement was entitled in the circuit court for the county of), and its decision shall be final."

§262. Subscription Contract.

We, the undersigned, do hereby severally promise and agree to pay to,, and, the trustees of the Society in the town of, (or the Commissioners of), the sums set opposite to our respective names, on demand (or as the terms of payment may be), for the purpose of building a church or place of worship for the said society in the town of, aforesaid; (or, for the purpose of constructing a bridge over the

..... river, on the road leading from
to); and we request the said Trustees (or,
Commissioners) to contract for the building of such church or
place of worship, and to build the same (or, for the construction
of such bridge, and to construct the same), and to apply the
sums of money hereto subscribed in payment therefor.

Witness our hands, this day of,

Names.

Amount.

.....	\$.....
.....	\$.....

See Text, §56.

§263. Supplemental Contract.

(Union Trust Co. v. Michigan Electric Co., 140 Mich. 132.)

"This Supplemental Agreement, dated this day of
....., between the
Company of, party of
the first part, and the Company, of
....., party of the second part.

"Witnesseth, Whereas the party of the second part agrees to
carry in stock (.....) incandescent lamps and
give party of the first part a monthly report of same accompanied
by an order calling for enough lamps to make the quantity in
stock equal to lamps. Party of the first part agrees
to allow party of the second part to give party of the first part
a \$..... note without interest, to be renewed every
months, with the understanding that the stock of the party of
the second part is at all times kept at lamps. The
party of the second part hereby agrees that the amount of in-
voices for lamps ordered during any one month will be paid for
in cash on or before the twentieth of the month following dates
of invoices.

"Party of the first part agrees to allow party of the second
part to settle the above \$..... note by the return of lamps
to that amount at purchase price at any time at the option of
either party, and by a day notice by either party."

§264. Teacher's Contract.

It is hereby agreed, by and between School District Number in the township of in the county of, state of, party of the first part, contracting by the district board, and of the of, in the county of, State of, a legally qualified teacher in said county of, party of the second part, that the said party of the second part shall teach the school of said district for the term of months, commencing on the day of, A. D. 19...., for the sum of dollars, to be paid as hereinafter specified.

And the said party of the second part agrees to teach said school during said period, to keep a correct list of the pupils, and the age of each, attending the said school, and the number of days each pupil is present, and to furnish the director of said district with a correct copy of the same at the close of the school; to make the reports required by law; to faithfully observe and enforce the rules and regulations established by the district board of said district for the government and management of said school, and during said term to endeavor to preserve in good condition and order the school house, grounds, furniture, and such other district property as may come under supervision.

And the party of the first part agrees to keep the said school house in good repair, to provide necessary fuel and school register, and to pay said party of the second part for h..... services as teacher of said school during the said term, the said sum of to be paid as follows:

.....

Provided, however, that in case the certificate of said party of the second part authorizing h. to teach, shall expire by limitation and shall not immediately be renewed, or in case said certificate shall be suspended or revoked by proper legal authority, then in either case this contract shall terminate, and the said party of the second part shall not be entitled to any compensation for services thereafter rendered.

.

In witness whereof, the members of the said district board, on behalf of the party of the first part, and the said party of the second part have hereunto set their hands this day of, A. D. 19. . . .

.
 Director.

.
 Moderator.

.
 Assessor.

.
 Teacher.

§265. Telegraph and Telephone Contract. Conditions.

All messages taken by this Company are subject to the following terms which are hereby agreed to:

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeatd message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeatd message and paid for as such,

in consideration whereof it is agreed between the sender of the message and this Company as follows:

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any un-repeated message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery of any repeated message, beyond fifty times the sum received for sending the same, *unless specially valued*; nor in any case for delays arising from unavoidable interruption in the working of its lines; *nor for errors in cipher or obscure messages.*

2. In any event the Company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the non-delivery of this message, whether caused by the negligence of its servants or otherwise, beyond the sum of fifty dollars, at which amount this message is hereby valued, unless a greater value is stated in writing hereon at the time the message is offered to the Company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

3. The Company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other Company when necessary to reach its destination.

4. Messages will be delivered free within one-half mile of the Company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the Company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this Company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the Company's messengers, he acts for that purpose as the agent of the sender.

6. The Company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

See Text, §57.

§265a. Telegraph and Telephone Contract. Telephone.

No.

Dated.....

The subscriber to above mentioned contract No. hereby agrees to pay the Telephone Company the sum of dollars per in advance from, 19..., to and including the last day of, 19..., for the use of the telephone located at as an extension telephone in connection with exchange service contract No. dated

This agreement goes into effect on the day of, 19..., and is understood as being renewed for consecutive terms of three months each until terminated by written notice from either party to the other, or may be terminated by the Lessee at any time by written request and payment of the full rental and other charges earned up to date of payment and surrender of instruments, but ceases in any event at the termination by lapse of time or otherwise of the aforesaid Exchange Service contract No., the terms and conditions of which are made a part of this agreement.

The Lessee hereby acknowledges the receipt of a duplicate hereof.

Signed at, 19....

Accepted.

.....Lessee.

By.....

By, Manager.

LESSOR.

The subscriber (lessee), requests the Telephone Company (lessor), to install a telephone at his premises No. street, and connect the same for his use with metallic circuit line with the Company exchange, upon the terms and conditions stated below, which he hereby promises to keep and perform, and agrees to pay therefor to the said Company, the total sum of dollars, per quarter in advance, from the date of connection until and including the last day of, 19.., and this contract shall be understood as renewed thereafter for consecutive terms of three months each, until terminated as hereinafter provided.

This contract may be terminated at the end of either of the terms above specified, by previous written notice from either party to the other, or may be terminated by the lessee at any time, by written request and payment of the full rental and other charges earned up to the date of payment and surrender of instruments, and one-half of the remainder of rental stipulated above, for the balance of the term then existing.

TERMS AND CONDITIONS.

The service is for the exclusive use of the lessee, his employees and members of his family.

The lessor does not guarantee the uninterrupted working of the line or instrument. No abatement of the rental charge shall be made for interruptions unless the same have continued for more than twenty-four hours and notice in writing is given of each interruption.

For non-payment of any rental or toll line charge, the service may be discontinued after written notice is given by the lessor.

No attachment of any character is to be made to the instrument or line without the consent of the lessor.

The lessee shall not make use of foul or profane language

or personate any other individual with fraudulent intent over the wires connected with his instrument.

The instruments furnished are the property of the lessor.

The lessee assumes all risk for errors and delays in the transmission and delivery of messages over the instruments and lines of the lessor.

The telephone will be placed where first directed by the subscriber. A change from this to any other location will be charged for.

This request to establish the service becomes a contract when accepted by the Manager, or higher official of the Company, by his signature thereto or by furnishing said instruments.

The terms and conditions of this contract cannot be varied or waived by any representations or promises or any canvasser or other person.

The lessee hereby acknowledges the receipt of a duplicate hereof.

Signed at, 19

. Lessee.

See Text, §57.

§265b. Timber Land Contracts. Conditions.

It is hereby further agreed:

First, that the said part... of the second part shall not cut, or permit to be cut or carried away from said premises, any timber, wood or other material without the consent in writing of the part... of the first part thereto being first had and obtained.

And if the part... of the second part shall cut, or permit to be cut, any timber or wood upon said premises, or remove, or permit to be removed or carried away therefrom, any material, without the consent in writing of the part... of the first part obtained as aforesaid, such act shall be deemed and taken to be a surrender of this agreement by and shall henceforth and forever absolutely forfeit all claim to deed

of said land, and every part thereof, and to all improvements which may have made thereon, and the part . . . of the first part shall thereupon be wholly released, absolved and discharged from all liability or obligation to make the conveyance aforesaid, or to refund any of the moneys which may have been paid upon this agreement, or upon said notes; but said part . . . of the first part shall be at liberty, and shall have full right to grant, bargain, sell and convey said premises, and every part thereof to any other person or persons, wholly released and discharged from all right and interest, claim and demand of the part . . . of the second part therein and thereto, the same as though this agreement had not been made.

And if the part . . . of the second part shall be or remain in the possession or occupancy of any portion of the above bargained premises after a violation of this agreement by the cutting of timber or wood thereon, or by the removal of materials therefrom, or after default in the payment of the said notes at maturity, or in any other of its conditions shall be deemed and taken to be trespasser . . . , and may be ejected from and put out of the possession or occupancy of the premises, either with or without process of law; and no notice whatever to the part . . . of the second part shall be necessary to entitle the part . . . of the first part to enter upon and take possession of said premises, and to sell and convey the same to any other person. And further, it is hereby understood and agreed, that in case of a violation of this agreement by the wrongful cutting of timber or wood, or the removing of materials, or any other violation of this contract as herein mentioned, the part . . . of the second part shall also be liable to be proceeded against as trespasser . . . , in the same manner and to the same extent and effect as provided by law in case of trespassers upon pine or other lands.

Second: That this contract shall not, nor shall any portion or interest therein, be sold or assigned without the written consent of the part . . . of the first part.

All the obligations, stipulations and conditions herein con-

tained are hereby declared to extend to, and be binding upon, the legal representatives and assigns of the parties respectively making the same.

In witness whereof, the said parties hereto have affixed their hands and seals at to this, together with one other contract of like tenor, on the day and year first above written.

Accepted

By

By, Manager.

§266. Trade or Business Contract.

This agreement, made and entered into this day of, A. D. 19..., by and between of, party of the first part, and of, party of the second part, witnesseth:

That said party of the first part shall sell and deliver to said at his place of business,, in,, on the day of, 19..., in good, substantial condition (*or as the case may be*).

In consideration whereof, said party of the second part shall sell and deliver to said party of the first part at his place of business (*or as the case may be*) in on the day of, 19..., in a sound substantial condition according to sample (*or as the case may be*).

In witness whereof the parties have hereunto set their hands the day and year first above written.

See Text, §58.

§267. Trade or Business Contract. Conduct Business.

This agreement, made and entered into, this day of, A. D. 19..., by and between of, hereinafter known as the

Company, and of
hereinafter known as the manager, witnesseth:

That the said company having stocked and furnished the
store known as No., in the city of
....., County, and State of,
with the following described goods, merchandise and wares:
.....

For the purpose of establishing a retail business under the
management and agency of the said manager to sell, vend and
dispose of the said stock in accordance with the promises herein-
after set forth.

Now, in consideration of the promises and agreements here-
inafter mentioned it is distinctly understood and agreed, that
in the management and conduct of the said business the said
manager shall use his best endeavors and skill to procure the
greatest possible sale of all such goods which he shall be em-
ployed to sell either for ready money, or to persons of respon-
sibility and substantial credit.

That in selling upon credit, said manager shall be circumspect
and cautious, and shall not sell to persons who are insolvent or
unreliable. No credit shall be given at any time to any person
or persons for a greater length of time than,
without the consent of said company, nor shall said manager,
without like consent, sell to any person on credit a greater
amount than dollars.

That in conducting said business, said manager shall conform
to and govern himself by such orders or directions as he may
from time to time receive from said company, and as his best
judgment may dictate, i. e., in a manner most advantageous to
the company. He shall account for all goods and transmit to
the company all moneys, bills, securities received from the sale
of goods at the end of each month, and without further demand.
He shall keep books of account in which he shall enter all goods
received from the company and all goods sold, to whom; whether
for cash or credit, and any other matter or thing which in any

wise might concern said business. He shall preserve all books of account, documents, papers, and writings concerning said business in a fire-proof safe, to be provided by the company; and in case of final adjustment he shall deliver all the same to said company.

That onday of each and every year (unless said day shall be Sunday, and in that case, on the day following) he shall take stock, make an inventory of all the stock on hand, and accurately balance up all books of account so that the state and condition of said business shall appear clearly therefrom.

That said manager shall have full authority to hire and discharge such help, clerks, and servants as he may require for the purpose of constantly assisting him in the management of said business.

That said company or any agent appointed by it shall at all seasonable hours of business days have free access to said books, papers, documents and writings concerning said business and the right to take copies and extracts from the same.

That in consideration of the true and faithful performance of the covenants herein contained the said company shall pay quarterly or cause to be paid unto said manager the sum of dollars.

That all expenses relating to the conducting of said business, transportation charges, light, heat and water rent, store-room rent, sprinkling streets, salaries, etc., shall be borne by the income of said business.

That said manager shall not be answerable for any loss or damage which may happen to any goods or merchandise sent him during transit or before the same came into his care and custody; nor for any loss or damage which may happen to the same after actually coming into his hand and custody, or which shall be sent by said manager to any customer through any of the usual means of delivery, or otherwise, unless said manager shall have occasioned such loss through his own neglect, and the remedy against the proper party is thereby made so uncertain

that the loss cannot be recovered. For any other loss or damage which may happen to goods or merchandise committed to his charge or care said manager shall not be answerable unless the same happen through his wilful neglect or omission.

That said manager shall duly put an advertisement in a paper published in shall change the same at least once a week, shall use the best of his ideas to put his goods before the public.

That the manager shall devote his whole time and attention exclusively to said business, and shall not engage in any other business whatsoever nor as a competitor of the company either on his own account or as agent, and either alone or in partnership with any person or persons whatsoever.

That said manager shall carry on and conduct said business at No. street in, or in such other store in, as the company may appoint or direct for that purpose.

That it is further mutually agreed that said relation may be terminated at any time by either party on giving the other one month's notice in writing, except in case of breach, when the same shall be forfeited absolutely.

That upon any breach hereof the manager shall forthwith turn over to said company, or its agent, all moneys, bills, securities, books of account, papers, writings, stock of goods, possession of said place of business. To that end said manager shall give said company his bond, with sureties, executed in the penal sum of dollars, conditioned to be void upon compliance with the terms of this contract.

In witness whereof the parties hereto have set their hands and seals this day and year first above written.

See Text, §58.

§268. Trust Contract.

(Detroit Salt Co. v. Natural Salt Co., 134 Mich. 104.)

"This agreement, made this day of,
....., between the, a corporation of

....., its successors or assigns, party of the first part, and, a corporation of, its successors or assigns, party of the second part.

"Witnesseth: That for and in consideration of the sum of dollars and other valuable consideration, paid by the party of the second part to the party of the first part, receipt of which is hereby acknowledged, the party of the first part hereby sells to the party of the second part their production of salt made at their works, situated on the line of the Railroad, in, county, State of, for the term of years, commencing on the first day of, upon the following terms and conditions:

"1. For the first barrels of salt, of lbs. each, delivered per annum, for each and every lbs. of No. 1 Medium salt, delivered on warehouse floor of plant of party of the first part. For any salt manufactured in excess of barrels, price shall be per lbs. of salt, delivered as aforesaid. Any dairy or table salt which may be required by the second party will be furnished by first party, within their capacity to produce same, at per lbs.

"II. Invoices for shipments shall be rendered promptly, and statements shall be rendered upon the last working day of each month for shipments made during that month. Payments therefor shall be made not later than the day of the next month succeeding shipment for all invoices, except such invoices concerning which there may be a dispute as to quantity or quality; such invoices to be settled when adjustment has been agreed upon.

"III. Should party of the second part fail to remove salt hereby sold, in sufficient quantities so as to enable the party of the first part to run said plant to its full capacity, thereby necessitating the suspension of manufacture in all or any part of said plant, because of lack of storage room due to failure of party

of second part to remove said salt, then days after the notice in writing to second party of such failure, the party of the second part shall pay to the party of the first part, as liquidated damages, the sum of per lbs. of salt not manufactured in consequence thereof, for a period of time not exceeding months in the aggregate in any one year (dating from the date of this agreement), the sum of per barrel upon estimated capacity of said plant or any portion thereof, that may be closed down in consequence of the failure of said party of the second part to remove salt as heretofore agreed. The capacity of said plant to be determined by taking barrels of salt, of lbs. each as an average daily production of each pan, and multiplying the same by the number of pans idle, not exceeding six, however, that being the number in said plant.

“IV. It is distinctly understood that the party of the first part makes no obligation to deliver a specific quantity of salt, but they do agree to deliver to the party of the second part their entire production, and their failure to do so shall be settled by liquidated damages to be paid the party of the second part by the party of the first part, of dollars per year.

“V. And the party of the first part does hereby license the party of the second part to the exclusive name as trade-mark, and to the organization, of the Company, during the period of this contract.

“VI. Party of the second part hereby agrees to ship via Railroad the entire production of salt hereby purchased, providing the facilities furnished and the rate of freight made by the Railroad Company are as advantageous as those given by competitive lines, and the prevailing freight differential between points, and maintained. It is understood in this connection that any favorable privileges granted by the Company, and now enjoyed

by the party of the first part, shall accrue to the advantage of the party of the second part.

"VII. The party of the first part agrees to assign all contracts for cooperage, specifically described in Exhibit A hereto attached, to the party of the second part, and to sell to the party of the second part all cooper stock, bags, and pockets that said party of the first part has on hand, at cost; also to sell all salt on hand on, at the same price as stated in paragraph one.

"VIII. In the event of the destruction of the plant belonging to the party of the first part, as a whole or in part, by fire or other cause, they shall have the privilege of rebuilding the same to its present capacity.

"It is understood that the price named herein is based upon the present price of fuel, which is \$. per ton for Pittsburg No. 8, coarse slack, and \$. per ton for Hocking coarse slack f. o. b. Any advance in same is to be borne by the party of the second part, and any decline to accrue to their benefit.

"In witness whereof, the parties hereto have caused these presents to be duly executed on their behalf, by their respective officers, and their respective incorporated seals hereunto affixed.

" Co.

(Signed)

"By Pt.

" Co.

"By Prest.

"Attest:"

See Text. §59.

§269. Trust and Combination Contract.

(Richardson v. Buhl, 77 Mich. 632.)

Memorandum of agreement between, of the first part, and and, of

the second part, all of,, witnesseth as follows:

"Whereas, it is deemed expedient to wind up the business of the Company, and to unite its interests with the other manufacturing interests in the United States in one corporation, to be known as the Company, organized under the laws of; and,

"Whereas, said desires to furnish dollars toward the necessary working capital of said Company, and also to sell his factory, and the machinery connected with same, to said Company.

"Now, therefore, for the purpose of making such consolidation, the parties hereto consent that the lands, buildings, machinery, tools, and fixtures of the Company be sold and conveyed to the said Company for the sum of dollars, to be paid for in the common stock of said Company at its par value. And as it will be necessary for said to borrow the principal part of said dollars, for which he is to receive dollars of the preferred stock of said Company at its par value, the said second parties agree to indorse the said notes for such sum as is required to make up said dollars, after deducting the amount of the net earnings due said from the proceeds of the Company since,, and to raise the money on said notes.

An inventory of all the materials of the said Company on hand,, shall be made, and such property sold. The inventory and valuation of said personal property, upon which the same is sold, shall be the basis of settlement between the parties in the division of the profits of the Company. The first party is to assume the payment of the principal and interest of a mortgage on the property of the Company for

\$....., held by the Insurance Company, and is to deposit with said Company, \$..... of said common stock at its par value, as security for such payment. All the remaining stock, both preferred and common, is to be taken in the name of the first party, and with the exception of shares of said common stock, is to be immediately transferred by him to said, to be held by said as security for the indorsements as above stated, and any and all other indebtedness of said first party or said Company to said parties, or either of them, and also as security to said second parties for their interest in the profits upon the said stock of the Company.

The debts due to the said Company are to be collected, and its indebtedness paid. A settlement is to be made between the parties hereto, and the profits divided, as provided in the agreement of, except that the share of the profits belonging to said first party shall be applied to the payment of his debt to the Company, and in payment of any moneys due from him to either of said second parties; and what remains shall be contributed by him as a part of said \$....., and on the sum contributed he shall receive interest from the dividends paid on said stock.

The dividends on the stock of the Company, both common and preferred, including the \$..... pledged as aforesaid, and the shares retained by said, for year and months from, shall be applied, *first*, to the payment of interest on said mortgage to the Insurance Company; *second*, to the payment of interest on the notes so indorsed by said second parties; and *third*, to the payment of interest to each of the parties hereto on the money advanced by them respectively in making up said sum of Of what there remains, shall be paid to each of the

said second parties, and the other half applied to the payment of the principal of the notes so indorsed by said second parties, and of any advances that may be made by them.

The said second parties agree that they will advance to said first party the dividends belonging to them as aforesaid, to be used in taking up said notes indorsed by them, and take therefor the notes of said first party, payable on or before,, with interest at the rate of per cent per annum, and hold said stock as security for the payment thereof. If all said notes indorsed by said second parties as aforesaid are not paid by,, then said second parties shall be entitled each to of the dividends on all said stock for the whole of the year The notes to be given by said first party to said second parties for any cash that they may advance to make up said \$. shall bear interest at per cent. per annum, and be payable on or before, If all of the notes indorsed by said second parties as aforesaid, and any notes given by said first party to said second parties, are not paid by,, the said second parties are hereby authorized to sell said stock at public auction after days published notice, and apply the proceeds, or so much thereof as may be required, to the payment of said notes, interest, and expenses; the above provisions to apply to all original notes and renewals thereof.

It is expressly understood that said second parties are to receive (.), after deducting the payments for interest as above stated, of the net earnings of said stock, and not merely the dividends; and in settlement with said first party, he is to pay them, in addition to the dividends declared, the of any surplus or reserved fund which, if divided, would pertain to said stock; and on such settlement no loss that may be charged on account of the purchase and sale by said Company of other factories shall be taken into account;

and, if such settlement is made at the end of a, the earnings of the whole year shall be averaged so that the said second parties shall receive the full half of the earnings of said stock for the whole year. Provided, that on such settlement the second parties shall estimate such earnings from the trial balance or books of said Company, and shall make such allowances as to them shall seem just and equitable for loss and shrinkage in values of said and shall take into consideration improvements that have been made out of the earnings thereof.

“”
 “”
 “”

“, ,”

It is also agreed that the earnings of the stock of the Company, both common and preferred, including the \$. pledged to the Company, and the shares held by said, for years after the day of, , shall be applied as stated in said agreement of, ; it being the intention hereof to provide that said second parties shall each receive of the earnings of said stock for years from, , that is, of the full earnings of the stock for and, instead of for year and months, as stated in said agreement. In all other respects, except providing security for additional loans, as hereinbefore stated, said agreement is to remain in force and unchanged.”

See Text, §59.

§270. Underwriting Contract.

AGREEMENT made the day of, 19 . . . , between (hereinafter known as the underwriter), parties of the first part, Trust Company, of the city, a corporation organized and existing under and by virtue of the laws of the state

of (hereinafter known as the trust company), party of the second part, and, doing business as bankers in the city, (hereinafter known as the bankers), parties of the third part.

WHEREAS, the bankers have purchased and recently consolidated the properties known as the Company of, and the Company, merging the same into a new company under the name of the Company; and,

WHEREAS, the trust company is about to make a loan of dollars to the said Company, which loan is to be evidenced by the promissory note of the said Company, indorsed by said, and payable in one year from the date of this agreement, with interest at per centum per annum, payable quarterly in advance; and,

WHEREAS, said loan is to be secured by of the bonds of the said Company, with shares of the capital stock of the said company, said bonds and stock being now owned by said; and,

WHEREAS, the underwriters are desirous of purchasing certain of said bonds of the Company held under said loan;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the underwriters, in consideration of one dollar and other valuable considerations, the receipt whereof is hereby acknowledged, do each for himself or themselves and his or their heirs, executors, and administrators, and not for the others, agree with the trust company that after the day of, 19..., and on or before the day of, 19..., the said underwriters will purchase, upon the demand of the trust company, the number of bonds of dollars par value each of said

now in possession of the trust company, and the number of shares of said stock of dollars par value, set opposite their respective names, and pay therefor the sum of dollars for each bond, together with the interest thereon at the rate of per centum per annum from the due date of the last unattached coupon, and for each shares of stock set opposite their respective names, and will respectively pay their proportionate amount of overdue interest, if any, that may be due upon said loan after crediting the amount paid as aforesaid upon said coupons.

Each underwriter agrees that the trust company shall have the right to reduce the subscription of any underwriter, and to make allotment in any case of less than the number of bonds subscribed for.

In the event that a less number of bonds than is subscribed for shall be allotted in any case, the underwriter or underwriters to whom such less number of bonds may be so allotted, agrees that he or they will take and pay for such less number of bonds at the same price per bond, and upon the same terms of payment as those mentioned above.

In case of the failure of the underwriters, or any of them, to take and pay for the said bonds at the times and as provided in this agreement, the holder of said note of said Company may, without further demand or notice, sell, assign, or deliver the whole or any part of said securities not so taken and paid for, at any brokers' board, in the city of, or elsewhere, or at public or private sale, at their option, at any time or times thereafter, without advertisement or notice, and the trust company shall have the right to become purchasers thereof at such sale or sales, freed and discharged from any equity of redemption; and the underwriters severally agree that all interest, and legal or other costs, charges, or expenses may be deducted from the proceeds of such sale, and the residue applied on the liability or indebtedness of such defaulting underwriter under said note and this agreement; the overplus, if any, to be returned to the

company, and if there shall be any deficiency, the several underwriters hereby promise to pay the same so far as it may arise under their own subscriptions or default, and not otherwise.

The underwriters each further agree that the bankers shall have the right to purchase from or through the trust company at any time on or before.....19...., all or any part of the bonds for which the underwriters have subscribed, at the price of not less than.....dollars, and accrued interest per bond and cash.....share of stock, but in such event the trust company shall apply.....dollars and accrued interest for the bonds and stock so sold, to the payment of the loan mentioned herein, and in the event that the bankers shall purchase all of the said bonds and stock hereby allotted to the said underwriters under the terms of this agreement, then and in that event the underwriters are hereby released from all further liability in the premises, and the trust company hereby agrees to notify them of such release.

The trust company agrees that upon payment at any time...., 19...., and on or before....., 19...., of said sum of.....dollars per bond and the accrued interest thereon hereunder, it will deliver or cause to be delivered to the persons entitled thereto respectively the number of said bonds and the number of said shares of stock now in its possession, for which the underwriters have respectively subscribed or which may have been allotted respectively hereunder, less their several respective proportions of any bonds and stock that may have heretofore been purchased by the bankers, as hereinbefore provided.

It is understood and agreed that each underwriter shall be liable only for and upon his own subscription or default, and not for or upon the subscription or default of any of the others.

In witness whereof, the trust company has caused this agreement to be subscribed by its president, and its corporate seal to be hereunto affixed, and the underwriters and said.....have

hereunto subscribed their names this day of, 19...

*(Signature and seals of trust
company and bankers.)*

*(Here follows signatures of underwriters, number of bonds,
number of shares of stock and amount.)*

§271. Union Labor Contract.

THIS AGREEMENT, made and entered into this.....day
of..... by and between the.....Company, through
its authorized representatives, the party of the first part, and the
subordinate union of the International Union of the City of
.....known as.....Union No.... by the com-
mittee duly authorized to act in behalf of the second part.

WITNESSETH, That from and after.....and for a
term of.....years ending.....and for such a reason-
able time thereafter (not exceeding thirty days) as may be re-
quired for the negotiation of a new agreement, the establishment
represented by the said party of the first part binds itself to the
employment in its.....and the departments thereof, of
mechanics and workmen who are members of No.
and agrees to respect and observe the conditions imposed by the
constitution, by-laws and scale of prices of the aforesaid organ-
ization, copies of which are hereunto attached and made a part
of this agreement.

And it is further agreed that aforesaid constitution and by-
laws may be amended by said party of the second part without
the consent of the party of the first part; Provided, however,
That such change does not in any way conflict with the terms of
the scales and rules as set forth in this contract.

It is further agreed that the scale of prices appended to this
contract shall continue in operation, without change, during the
life of this contract, except as may be mutually agreed between
the parties hereto.

A standing committee of two representatives of the party of the first part, and a like committee of two representing the party of the second part, shall be appointed; the committee representing the party of the second part shall be selected by the union; and in case of a vacancy, absence or refusal of either of such representatives to act, another shall be appointed in his place. To this committee shall be referred all questions which may arise as to the scale of prices hereto attached, the construction to be placed upon any clauses of the agreement or alleged violations thereof, which can not be settled otherwise, and such joint committee shall meet when any question of difference shall have been referred to it for decision by the executive officers of either party to this agreement. Should the joint committee be unable to agree, then it shall refer the matter to a board of arbitration, the representatives of each party to this agreement to select one arbiter, and the two to agree upon a third. The decision of this board shall be final and binding upon both parties.

It is further agreed by the party of the first part that in the event of the installation of machines or the substitution of machines other than those at present in use for.....or.....a scale of wages may be agreed upon by the joint committee of the parties to this agreement; but if no satisfactory conclusion can be reached, the matter shall be referred for final settlement to a board of arbitration as above provided for.

It is agreed by the said party of the second part that for and in consideration of the covenants entered into and agreed to by said party of the first part, the said party of the second part shall at all times during the life of this agreement truly and faithfully discharge the obligations imposed upon it by furnishing men capable of performing the work required in the mechanical department of the party of the first part over which party of the second part has jurisdiction.

It is agreed that both the language and the spirit of this contract between.....Company, party of the first part, and the organization known as.....Union No.

.....being a.....union chartered by and under the jurisdiction of the....., an organization having its headquarters at....., by its committee duly authorized to act in its behalf, party of the second part, make it imperatively obligatory on both parties, whenever any difference of opinion as to the rights of the parties under this contract shall arise, or whenever any dispute as to the construction of the contract or any of its provisions takes place, at once to appeal to the duly constituted authority under the contract, viz., the joint standing committee, to the end that fruitless controversy shall be avoided and good feeling and harmonious relations be maintained, and the regular and orderly prosecution of the business in which the parties have a community of interest be insured beyond the possibility of interruption.

It is further stipulated and agreed the party of the first part shall not now nor during the life of this contract enter into any association or combination hostile to the.....unions, nor shall it at any time render assistance to such hostile combination or association by suspension of publication or any other act calculated to injure the.....unions.

And the party of the second part hereby agrees to enter into no combination or association with the intent or purpose of injuring the.....Company or its property, and shall not be a party to any hostile act with similar intent.

The said.....Union No....., party of the second part, hereby reserves to its members the right to refuse to execute struck work received from or destined for unfair employment or publications.

This contract shall immediately become null and void, in event the charter of the said.....Union No....., party of the second part, is suspended or surrendered, and all union labels shall be immediately returned to the proper authorities.

This contract shall be null and void in case of trouble with an allied craft, providing such trouble can not first be settled by arbi-

tration, such arbitration to be in accordance with the provisions of this contract.

IN WITNESS WHEREOF, We have hereunto set our hands and seals.....day of.....

.....
.....

This contract is entered into by and with the consent of the International.....Union, an organization to which the party of the first part concedes jurisdiction and control over trade organizations in all mechanical departments of the party of the first part, with the.....; and the International....., through its authorized representative, hereby agrees to protect the party of the first part in case of violation of the agreement by the said party of the second part under the jurisdiction of said International Union.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this.....day of.....

.....

President International Union.

§272. Union Labor Contract. Label.

THESE ARTICLES OF AGREEMENT, Entered into this day of, A. D., by and between party of the first part, and.....Union No..... party of the second part.

WITNESSETH. That the said party of the first part, in consideration of the use and privileges of the union label, owned and controlled by the said party of the second part, as agents for the International.....Union, hereby agree to employ none but members ofUnion No.....party of the second part, not to use the said label or trademark upon anything but the strict production of union labor, and to neither loan nor duplicate said trademark.

The said party of the first part further agrees to pay the adopted scale of wages of the party of the second part, hereto attached, and to comply with all its laws and those of the International.....Union, now in force or hereafter adopted.

Any violation of this agreement shall make it null and void, and all cuts, electrotypes or stamps of the label or trademark of the party of the second part, in the possession of the party of the first part, shall immediately be delivered to the party of the second part, and the further use of the same after such annulment by said party shall be without warrant and illegal.

This contract shall immediately become null and void in event the charter of the said.....Union No....., party of the second part, is suspended or surrendered, and all union labels shall be immediately returned to the proper authorities.

IN WITNESS WHEREOF, We have hereunto affixed our hands and seals this.....day of.....A. D.....

For

..... ..

For

N. B.—This contract must be filed in triplicate.

§273. Warehouse Receipt Contract.

Received for the account of the goods enumerated in the schedule annexed upon the following conditions: Goods stored at owner's risk of damage by moth, rust, fire or deterioration by time.

The warehouse is not responsible for injury to fragile articles that are not packed or are packed or unpacked by others than the employees of the warehouse.

The responsibility of the warehouse is limited to fifty dollars for any article together with the contents thereof, unless a greater valuation is stated herein and a higher rate paid.

Bills for first month's charges will be presented on receipt of goods, thereafter bills payable semi-annually or as arranged.

All goods on which one year's storage is due and unpaid may be sold for charges at any time thereafter.

All dues must be paid before the delivery or transfer of goods and no transfer will be recognized unless entered on the books of the warehouse.

Storage rate per month :

Not negotiable.

Secretary.

Present this warehouse receipt and a written order when any goods are to be withdrawn.

Reasonable notice is required for access to or delivery of goods.

A labor charge will be made for handling of goods in the warehouse.

This warehouse receipt should be returned, properly endorsed, when all the goods enumerated in the schedule are withdrawn.

See Text, §31.

INDEX

INDEX

(References are to Sections.)

ACCEPT

intention to, 73

ACCEPTANCE

benefits from labor or goods, 14
communication of, 74
correspondence with offer, 75
effect of modification of offer by, 75
effect of variation of offer by, 75
emphasis placed on certain terms in, 78
guaranty as to, 80
mailing of, 79
necessity of, to be distinguished from offer, 83
order given to agent as to, 81
rejection of an offer, by one joint vender, 82
telegraphing of, 79
tickets, bills of lading, receipts, etc., 15
validity of, 77

AGREEMENTS

consideration of marriage in, 125-A
parol, ante-nuptial promise cannot be given in evidence under, in consideration of marriage, 125-A.
performance not, be within one year, 125-E

ASSENT

consideration in relation to, 123

AUCTION SALES

announcement of, 16

BAILMENT

consideration in relation to, 108

BENEFITS FROM LABOR OR GOODS

acceptance of, 14

BUSINESS CIRCULARS AND PROPOSALS

legal effect of, 17

CLAUSES IN CONTRACT

see stipulations in contract

COMPROMISE CLAIMS

consideration as to, 111

COMPOSITION WITH CREDITORS

consideration in relation to, 112

INDEX.

(References are to Sections.)

CONTRACT

- definition of, 1.
- definition of express, 5
- definition of formal, 11
- definition of implied, 5
- definition of quasi, 5
- definition of simple written, 13
- definition of simple, 13
- elements present yet failure of, 9
- essential elements of, 9
- suggestion how to draw a, 157
- privity of, 4
- what constitutes, 2

CONTRACTS

- classification of, 5

CONSTRUCTION OF CONTRACTS

- penalties and liquidated damages in the, 21 (h)
- reasonable time implied in the, 21 (g)
- time as the essence of in the, 21 (f)

CONSIDERATION

- adequacy of, 100
- assent in relation to, 123
- bailment in relation to, 108
- bills of exchange and promissory notes in relation to, 95
- classification of, 90
- composition with creditors in relation to, 112
- compromise of doubtful and unliquidated claims in relation to, 111
- contingency of, 102
- conditional promise as to, 103
- definition of, 88
- definition of valuable, 96
- definition of goods, 101
- distinction between motive and, 89
- division of, 97
- doctrine of illegal, 98
- doctrine of future, 109
- effect of failure of, 120
- failure of, 119
- for benefit of third persons, 107
- forbearance as to, 106
- formal contracts relation to, 94
- future advances as to, 110
- legality as to, 90
- medium of proof as to, 90
- modification as to, 117
- moral obligations as to, 116
- moves from, to whom, 93
- mutual promises as to, 99
- mutuality in relation to, 121
- necessity and sufficiency of, 92
- offer and acceptance relation to, 91
- performance of broken contract as to, 105
- performance of legal obligation as to, 104

INDEX.

(References are to Sections.)

CONSIDERATION—*Continued*

- pre-existing obligations as to, 114
- subject-matter in relation to, 122.
- subscription as to, 113
- time of performance as to, 90
- types of, 124
- unenforcible, 118

CONTRACTS FOR LAND

- principles relating to, 125-F

CONTRACT FOR A LEASE

- distinction between that and a lease, 125-F

CONTINUING OFFER

- nature of, 65

CONDITION PRECEDENT

- definition of, 22

CONDITIONAL PROMISES

- consideration as to, 103.

CONDITION SUBSEQUENT

- definition of, 22

CONDITIONS IN WRITTEN CONTRACTS

- definition of, 22
- division of, 22

CONSTRUCTION OF WRITTEN CONTRACTS

- clauses which are in conflict the more certain and definite clause prevails in the, 21 (d)
- general rules of, 21 (a)
- language must be given its manifest meaning in the, 21 (b)
- two or more instruments must be taken together in the, 21 (e)
- written and printed parts, written part governs in the, 21 (c)

DEED

- acceptance of essential to validity of, 12

DEFINITIONS

- actual delivery, 19 (f)
- condition, 22
- contract, 1
- constructive delivery, 19 (f)
- condition precedent, 22
- condition subsequent, 22
- executed consideration, 97
- executory consideration, 97
- express condition contract, 5
- good consideration, 101
- implied condition contract, 5
- novation, 125-C (a)
- simple contract, 13
- simple written contract, 19
- valuable consideration, 96

INDEX.

(References are to Sections.)

DELIVERY

- definition of actual. 19 (f)
- definition of constructive, 19 (f)
- deposited for, on death, 12
- escrow as to, 12
- presumptions of, 12
- what constitutes, 19 (f)

EQUITY

- consideration in, 101

EVIDENCE

- substantive rule of parol, 21

EXECUTED CONSIDERATION

- definition of, 97

EXECUTORY CONSIDERATION

- definition of, 97

EXPRESS CONTRACT

- definition of, 5.

EXPRESS AND IMPLIED CONTRACTS

- difference between 6.

FORBEARANCE

- consideration as to, 106

FORMAL CONTRACTS

- classification of, 12
- consideration relation to, 94
- definition of, 11
- delivery of, 12 (c)
- development of, 10
- nature of, 11
- sealing of, 12 (b)
- signing of, 12 (a)

FORMATION OF CONTRACT

- aggregatio mentium in, 5

FORMS

- agreements or contracts, skeleton, 126.
- agreements or contracts, skeleton, 127
- agreements or contracts, skeleton, 128
- agreements or contracts, general form, 129
- agreements or contracts, general form, 130.
- adoption contract, 131
- adoption contract, 132
- advertising contract, 133
- advertising contract, 134
- agreement for a lease, 135
- agricultural contract, 136
- apprenticeship contract, 137
- arbitration contract, 138
- arbitration contract, 139

INDEX.

(References are to Sections.)

FORMS—*Continued*

arbitration contract, 140
assigned claim contract, 141
attorney and client contract, 142
auction contract, 143
author's contract, 144
beet sugar contract, planting 145
beet sugar contract, 146.
board, lodging and support contract, 147.
board, lodging and support contract, between housekeeper and lodger
148.
board, lodging and support contract, support of insane persons, 149.
board, lodging and support contract, 150.
board of trade contract, wheat, 151
board of trade contract, a put, 152
board of trade contract, a call, 153.
board of trade contract, a spread, 154
building and construction contract, on proposal, 155.
building and construction contract, building, 156.
building and construction contract, between owner and builder, 157.
building and construction contract, building, 158.
building and construction contract, building, 158a
building and construction contract, theatre building, 159
building and construction contract, railroad, 160
building and construction contract, railroad, 161
building and construction contract, railroad, 162
building and construction contract, railroad, 163
building and construction contract, railroad, 164
building and construction contract, clauses, 165
building and construction contract, clauses 166
building and construction contract, clauses, 167
carriers' contract, ticket 168
carriers' contract, express receipt, 169
carriers' contract, conditions, 170
carriers' contract, live stock, 171
charter contract, 172
composition with creditors contract, 173
compromise and settlement contract, to conduct business, 174
compromise and settlement contract, to pay attorney fees, 175.
condition in contracts, condition precedent, 176
condition in contracts, condition subsequent, 177.
condition in contracts, showing implied condition, 178
conditional sale contract, 179
conditional sale contract, 180
conditional sale contract, 181
conditional sale contract, 182
conditional sale contract, 183
conditional sale contract, 184
conditional sale contract, 185
conditional sale contract, 186
conditional sale contract, 187
construction contract, to construe previous contract, 188
copyright contract, 189
corporation contract, general form, 190
corporation contract, subscription before organization, 191

INDEX.

(References are to Sections.)

FORMS—*Continued*

corporation contract, re-organization, 192
corporation contract, guaranty, 193
corporation contract, option in stock, 194
electric service contract, electric light, 195
employment contract, offer, 196
employment contract, 197
employment contract, 198
employment contract, 199
exchange property contract, real estate, 200
gas company contract, application, 201
guaranty contract, to extend credit, 202
guaranty contract, fidelity of employee, 203
guaranty contract, fidelity clause, 204
guaranty contract, endorsement, 205
insurance contract, policy, 206
land contracts, 207
lease and option contract, land, 208
manufacturing contract, general form, 209
manufacturing contract, engines, boats, machines, 210
manufacturing contract, patent articles, 211
manufacturing contract, lumber 212
manufacturing contract, lumber 213
manufacturing contract, lease of machinery, 214
marriage contract, 215
marriage contract, settlement of an estate, 216
marriage contract, settlement, 217
marriage contract, separation, 218
marriage contract, trust provisions, 219
marriage contract, antenuptial, 220
marriage contract, antenuptial, 221
marriage contract, antenuptial, 222
municipal contract, 223
municipal contract, light, 224
option contract, offer and acceptance, 225.
option contract, 226
option contract, 227
order in nature of contract, 228
partnership contract, 229
partnership contract, 230
party wall contract, 231
party wall contract, 232
principal and agent contract, conduct business, 233
principal and agent contract, 234
principal and surety contract, bond, 235
publishers, contract, 236
ratification of debt contract, infant or otherwise, 237
railroad compromise contract, receipt form 237a
real estate contract, sale of land, 238
real estate contract, farm on installment, 239
real estate contract, to cultivate land on shares, 240
real estate contract, provisions against nuisances, 241.
real estate contract, land, 242
real estate contract, 243
real estate contract, sale of land, 244

INDEX.

(References are to Sections.)

FORMS—*Continued*

- real estate contract, annulling of conveyance, 245
- revival of debt contract under statute of limitations, 246
- riparian contract, 247
- sale contract note, 247a
- sale contract, 248
- sale contract, 249
- sale contract, restraint of trade clause, 250
- sale contract, share of stock in company, 251
- sale contract, business, 252
- sale contract, 253
- sale contract, fruit, 254
- sale contract, ice, 255
- sale contract, nursery stock, 256
- sale contract, propeller, 257
- sale contract, lumber, 258
- sale contract, partnership interest, 259
- sale building and loan contract, 260
- submission contract, clause in contract, 261
- subscription contract, 262
- supplemental contract, 263
- teacher's contract, 264
- telegraph and telephone contract, conditions, 265
- telegraph and telephone contract, telephone, 265a
- timber land contracts, conditions, 265b
- trade or business contract, 266
- trade or business contract, conduct business, 267
- trust contract, 268
- trust and combination contract, 269
- underwriting contract 270
- union labor contract, 271
- union labor contract, label, 272
- warehouse receipt contract, 273

FUTURE ADVANCES

consideration as to, 110

FUTURE CONSIDERATION

doctrine of, 109

IMPLIED CONTRACT

definition of, 5

IMPLIED AND QUASI-CONTRACTS

distinction between, 7

INVITATION TO NEGOTIATE

distinguished from offer, 61

JUDGMENT

definition of, 12

JUDGMENT AND RECOGNIZANCE

classification of, 12

LAND CONTRACTS

See Real Estate Contracts

INDEX.

(References are to Sections.)

LEASE

distinction between, and contract for a lease, 123-F

MEMORANDUM

contents of, 19 (d), 125 (b)
constitution of, 19 (c)
delivery of, 19 (f)
form of, 19 (b), 125 (a)
form of signature to, 19 (e)
manner of execution of, 125 (c)
time of execution of, 125 (d)
variations of, by parol additions, 125 (e)

MODIFICATION

consideration as to, 117

MORAL OBLIGATION

consideration as to, 116

MUTUALITY

consideration in relation to, 121

NOVATION

definition of, 125-C (a)

OFFER

communication of, in some cases, 64
creation of legal relation, must be complete. 62
express revocation of, 67
form of, 72
implied revocation of, 68
irrevocable, when. 69
lapse of, 71
must be definite, 63
optional offer a continuing, 65
party reserve right to offer another proposition, 64
rejection of, 70
revocation of, 66
terms must be requisite. 62

OFFER AND ACCEPTANCE

assent, 60
communication of, 60
consideration in relation to, 87
consideration, 60
contractual relation, 60
evidence as to, 84
expression of, 60
implied agreements as to, 85
mutuality, 60
parties, 60
revocation of, 60
subject-matter as to, 86

OPTIONAL OFFER

nature of, 5

INDEX.

(References are to Sections)

ORAL CONTRACT

definition of, 5

PAROL EVIDENCE

substantive rule of, 20

PAROL EVIDENCE RULE

divisions of the evidential aspect of the, 20

exceptions to the, 20 (1)

limitations of, 20 (2)

PARTICULAR CONTRACTS

adoption of children contracts, 24

advertising contracts, 25

agricultural contracts, 26

antenuptial contracts, 27

apprentice contracts, 28

arbitration and award contracts, 29

attorney and client contracts, 30

bailment contracts, 31

board, lodging and support contracts, 32

board of trade contracts, 33

boundary contracts, 34

building contracts, 35

compromise and settlement contracts, 37

composition with creditors contracts, 38

conditional sale contracts, 36

corporation contracts, 39

definition of, 23

employment contracts, 40

exchange of property contracts, 41

guaranty contracts, 42

insurance contracts, 44

joint adventures contracts, 43

land contracts, 45

loans and advance contracts, 46

manufacturing contracts, 47

municipal corporation contracts, 48

option contracts, 49

partnership contracts, 50

party wall contracts, 51

principal and agent contracts, 52

principal and surety contracts, 53

riparian contracts, 54

sale contracts, 55

subscription contracts, 56

telegraph and telephone contracts, 57

trade and business contracts, 58

trust contracts, 59

PAST CONSIDERATION

executed or executory relation to, 115

PERFORMANCE OF BROKEN CONTRACT

consideration as to, 105

INDEX.

(References are to Sections.)

PERFORMANCE OF LEGAL OBLIGATION

consideration as to, 104

PRE-EXISTING OBLIGATIONS

doctrine of, 114

PRIVITY

essentials of, 4

PROMISES BY AN EXECUTOR, ETC.

principles of, 125-B

PROMISE TO ANSWER FOR THE DEBT, ETC.

rule of, 125-C

QUASI-CONTRACT

definition of, 5

RECOGNIZANCE

definition of, 12

REPRESENTATIONS

parol, 125-D

SALE OF GOODS

principals relating to contracts for, 125-G

STATUTE OF FRAUDS

agreements in consideration of marriage under, 125-A
agreements not to be performed within one year under, 125-E

availability of, 125-H (i)

collateral contracts as to, 125-H (f)

conflict of laws as to, 125-J

contract as ground for equitable relief under, 125-H (j)

contract as measure of damages under, 125-H (a)

contracts completely performed under, 125-H (g)

contracts for the sale of goods, 125-F

contracts for land under, 125-F

contracts implied by law on part performance under, 125-H (p)

contracts part within, 125-H (g)

contracts performed in part within, 125-H (h)

contracts performed in part under, 125-H (r)

contracts to convey land in consideration of the performance of services under, 125-H (o)

contracts to devise lands in consideration of the performance of services under, 125-H (o)

construction of, 125-I

enforcement of oral contracts in equity under, 125-H (d)

evidence as to, 125-Y

interest in estates created without writing operations of, 125-H (b)

operation of, 125-H

oral contracts as grounds of defense under, 125-H (t)

parol modification of written instrument under, 125-H (s)

pleading as to, 125-K

practice as to, 125-M

promise reduced to writing the rule under, 125-H (e)

INDEX.

(References are to Sections.)

STATUTE OF FRAUDS—*Continued*

promise by an executor or administrator under, 125-B
promise to answer for the debt, etc. under, 125-C
provisions of, 125
recovery of services under, 125-H (m)
recovery for use and occupation under, 125-H (1)
rights and remedies as to operation of, 125-H (a)
services rendered to third persons under, 125-H (n)
tender as to performance under, 125-H (k)
validity of oral contracts under, 125-H (c)

STIPULATIONS IN CONTRACT

alterations not to be made unless upon written order of architect, etc.
157
annulling of conveyances, 245
approval of bond, 155
business conducted by manager or agent, 233
business managed by committee, 173
compliance with city ordinance, etc., 155
compromise, 174, 173
conditions, 195
conditions concerning liability, 169
conditions limiting liability, 170
condition on railroad ticket, 167
condition precedent, 176
condition subsequent, 177
construction to be as to plans and specifications, 158
controversy in case of accident how to be settled, 147
covering building in progress of erection, 260
debt under statute of limitations, 246
default in payment in conditional sale contract, 179
delay in completion, 167
disposal of rubbish, garbage, etc., 147
disputes under contract to be referred to engineer or superintendent, 161
exchange of property, 200
fidelity, 204
forfeiture, 238
guaranty to extend credit, 202
halls and stairways to be kept clean, etc., 147
hiring in conditional sale, 179
implied condition, 178
installment payments in conditional sale, 181
lease of machinery, 214
liquidated damages, 129
manner of keeping walks, lawn, etc., 147
non-assignable without consent of engineer, 163
option, 204
partnership interest conditional sale, 185
payments made on estimates, 163
payments retained as liquidated damages, 181
protection and safe guard against accidents, 163
render an inventory, 174
reorganization of corporation, 192
separation in case of marriage, 218
settlement in marriage, 217

INDEX.

(References are to Sections.)

STIPULATIONS IN CONTRACT—*Continued*

- successors and assigns to succeed to all rights, 162
- terminate agreement without notice, 162
- time as of the essence, 155
- trust provisions, 219
- where an engineer or superintendent is to assume the work when the contractor fails to complete in time specified, 160
- work specified in plans but not in specifications to be executed just the same, 158

SUBSCRIPTION

- consideration as to, 112

TIME TABLES

- legal effect of, 18

TICKETS, BILLS OF LADING, ETC.

- acceptance of, 15

WRITTEN CONTRACTS

- agreements which by statute or law must be reduced to, 19.
- clauses which are in conflict in, 21 (d)
- construction of, 21
- definition of, 5
- definition of simple, 19
- delivery of, 19 (f)
- division of, 19
- exception to the parol evidence rule as to, 20 (1)
- form of signature of, 19 (e)
- language employed in, 21 (b)
- limitations to the parol evidence rule as to, 20 (2)
- matters which by the force of law are part of, 19
- matters which did not find expression in, 19
- matters which are presumed in, 19
- memorandum must be in form of, 19 (b)
- memorandum when made in form of, 19 (a)
- parol evidence admissible when to prove, 19
- penalties and liquidated damages in, 21 (h)
- reasonable time implied in, 21 (g)
- rules of evidence govern, 19
- substantive rule of parol evidence as to, 20
- time as the essence of, 21 (f)
- written and printed parts of, 21 (c)

C.F.



